United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-7439

IN THE

United States Court of Appeals

For the Second Circuit

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff-Appellee,

v.

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL H. ESCHEN, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS, JAMES F. MORRILL,

Defendants,

PENN-DIXIE INDUSTRIES, INC. (formerly Penn-Dixie Cement Corporation), JEROME CASTLE, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, JAMES F. MORRILL,

Defendants-Appellants.

APPELLANTS' APPENDIX

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
Attorneys for Appellant
Penn-Dixie Industries, Inc.

ARANOW, BRODSKY, BOHLINGER, BENETAR & EINHORN
Attorneys for Appellants
Jerome Castle, Omar J. Glantz, James C. Jacobsen, Harvey Kushner, Alfonso J. Marcelle and James F. Morrill

UNITED STATES COURT OF APPEALS
FILED
NOV 9 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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Docket Entries

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Rule 23

Jury demand date: pltf. 11-4-74

JUDGE METZNER

73 CIV. 1467

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

-v-

PENN-DIXIE CEMENT CORPORATION,
JEROME CASTLE,
DANIEL H. ESCHE,
OMAR J. GLANTZ,
JAMES C. JACOBSEN,
HARVEY KUSHNER,
ALFONSO J. MARCELLE,
OLIVER K. PARRY,
PAUL WINDELS, JR.,
GEORGE C. GREEN,
ERIC M JAVITS, &
JAMES F.MORRILL

For plaintiff:
Berman and Zivyak
450 Park Ave, NYC 10022 593-1570

For defendant:
Fried, Frank, Harris, Shriver & Jacobson (for deft. Penn-Dixie) 120 B'way, NYC 10005 -NO-4-
Aranow, Brodsky, Bohlinger, Benetar, Einnor & Dann (for defts Jerome Castle, etal.)
469 Fifth Ave., NYC 10017 - 889-1470

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		4/3/73	Penn #2	15 —	
			4/10/73	U.S. —	—	15 —
J.S. 6 mailed ~~3/6/75~~ 12-appeal ~~3/6/75~~ Rescinded	Marshal		6/14/74	Schlick	5 —	
			6/18/74	Miller		5 —
Basis of Action: Violation of SEC Act of 1934. $10,000,000.00	Docket fee		8/2/74	Fried	5 —	
			8/26/74	Treas.		5 —
	Witness fees					
Action arose at:	Depositions					

...CHLICK, individually and on behalf of all purchasers of common stock of Cont...
...el etc. -v- PENN-DIXIE CEMENT CORP.,et al.

JUDGE METZ

BEST COPY AVAILABLE

3a

73 CIV. 14

DATE	PROCEEDINGS
Apr5-73	Filed complaint and issued summons.
Apr30-73	Filed ORDER- Ordered that the time for defts to answer is extended to 5-30-73. METZNER,J. (mn)
Apr17-73	Filed summons and entered marshal's return served on: Penn Dixie Cement Corp by Vincent J. Enerch on 4-10-73, Jerone Castle by Vincnet J. Enerch on 4-10-73, Omar J. Clantz by Vincnet J. Enerch on 4-10-73, James C. Jacobson by Vincent J. Enerch on 4-10-73, Alfonso Marcelleby Vincent J. Enerch on 4-10-73, George C. Green unexecuted on 4-10-73 & James Morrill by personal service on 4-10-73.
Apr30-73	Filed defts' motion for enlargement of time to answer or move ret: 5-30-73.
Apr30-73	Filed defts' memorandum of law in support of request for enlargement of time to answer or move.
Jun 7,73	Filed Defts Jerome Castle,et al's Notice of Motion before Judge Metzner,Rm 2201, 6/15/73,10:00 A.M. re:dismissing complaint,etc.
Jun 7,73	Filed Memorandum on behalf of individual defts.
Jun 7,73	Filed Deft.Penn-Dixie Cement Corp's Notice of Motion before Judge Metzner,Room 2201 6/15/73,10:00 A.M. re:dismissing complaint,etc.
Jun 7,73	Filed Memorandum in support of Motion of deft.Penn-Dixie Cement Corp for Judgment dismissing complaint for failure to state a claim.
Jun20-73	Filed Stip and Order that the pltff's time to move for a class action treatment per to Fed. R. Civ P 23 is extended to fifteen days after the entry of an order determining the motion of the defts Penn-Dixie Cement Corp to dismiss the complaint. METZNER,J.
Jun29-73	Filed deft Penn-Dixie Cement Corp's reply memorandum in support of motion dismiss.
Sep-25-73	Filed OPINION #39861.. For reasons indicated in this opinion counts I and II of the complaint must be dismissed. Inasmuch as plaintiffs' federal claims have been dismissed, there is no basis for rdaining the common law claims alleged in counts III and IV under the doctrine of pendent jurisdiction. So ordered. -- Metzner, J. (m/n)
Sep-26-73	Filed memo endorsed on defts. Jerome Castle, etal. motion to dismiss filed 6-7-73: This motion is granted. See opinion #39861 filed this day. So ordered - Metzner, J.
Jun-28-73	Filed plaintiffs memorandum of law in opposition to motion to dismiss under Rule 12(b)
Sep.27-73	Filed JUDGMENT--ORDERED AND DECREED that ALL the defts. have judgment against pltfs.John Schlick,Individually and on behalf of all purchasers of the commons stock of Continental Steel Corp. similarly situated,dismissing the complaint. Clerk Entered on docket Sept. 28,1973. m/n
OCT.17-73	Filed defts. notice of appeal to the USCA from the final judgment entered against all defts. on June 21,1973 and from so much of the order of Sept. 21,1973 denying them relief.Mailed copy to: Hill,Betts and Nash.(pltf.)
OCT.16-73	Filed pltfs. notice of appeal to the USCA appealing the final judgment entered on Sept. 27,1973. Mailed copies to: Fried, Frank,Harriss, (deft. Shriver and Jacobson and Aranow Brody,Bohlinger,Benetar,Einhorn and PennDixie)(for deft. Castle)
Nov.20-73	Filed record on appeal proceeds have been certified and transditted to USCA 2nd Circuit
12-4-74	Filed plaintiff's notice that record has demand for a jury trial.
03-06-75	Filed true copy of USCA order with opinion attached that the judgment is reversed and that the action is remanded to said District Court for further

(cont on Page 3)

(cont) proceedings in accordance with the opinion of this court with costs to be taxed against the appellees. Bill of costs taxed in the sum of $700.45 in favor of appellant. Docketed as a judgment, #75,208 on March 11, 1975. (mailed notices)

03-27-75 Filed by Deft. Penn-Dixie Cement Corp. memorandum of law in support of motion for a stay.

03-27-75 Filed by deft. Penn-Dixie Cement Corp. affdt. and notice of motion for a stay - ret. 4-3-75.

04-02-75 Filed memo endorsed on defts motion filed 3-27-75: This motion is marked withdrawn, pursuant to letter dated 3-31-75 - So ordered - Metzner, J.

04-02-75 Filed stip. and order staying proceedings until 15 days after decision on petition for a writ of certiorari (filed in US Supreme Court on 3-13-75)-- Metzner, J.

03-26-75 Filed stip. and order that the time for deft. to answer request for production is ext. to 4-10-75 -- Metzner, J.

06-02-75 Filed stip. and order that defendants shall file answer on or before 6-13-75; and that defts shall respond to pltf's first request for production of documents on or before 6-20-75. No further extension will be sought. -- Metzner, J.

05-30-75 Filed pltf's first request for production of documents.

06-13-75 Filed ANSWER of deft. PENN-DIXIE CEMENT CORPORATION. FFHS&J

06-16-75 Filed deft. Penn-Dixie Cement Corporation notice to take deposition of pltf. John Schlick at 10:00 on July 8, 1975.

06-17-75 Filed ANSWER of deft's Castle, Glantz, Jacobsen, Kushner, Marcelle and Morrill. ABBB&E

06-20-75 Filed deft. Penn-Dixie Cement Corp. response to pltf's first request for production of documents.

07-02-75 Filed pltf's affdvt. and notice of motion to compel - ret. 7/15/75

07-01-75 Filed deft. Penn-Dixie's amended notice to take deposition of pltf. John Schlick on 7-15-75.

06-23-75 Filed supplemental response of Penn-Dixie Cement Corp. to pltf's first request for production of documents.

07-16-75 Filed stip. and order adj. motion to compel to 7-18-75--Metzner, J.

07-17-75 Filed answering memorandum of deft. Penn-Dixie Cement Corp. in opposition to pltf's motion to compel.

07-18-75 Filed pltf's affdvt. and notice of motion for an order declaring the instant action to be a class action etc. as indicated. ret. on July 29, 1975.

07-18-75 Filed pltf's memorandum of law in support of above motion.

07-30-75 Filed by deft. Penn-Dixie Industries, affdvt. and notice of motion to adjourn the return date of class action application, and adj. a deposition described in affdvt. ret. 8-4-75

07-30-75 Filed Penn-Dixie's memorandum in support of above motion.

08-04-75 PRE-TRIAL CONFERENCE HELD BY Metzner, J.

08-06-75 Filed memo endorsed on Penn-Dixie's motion filed 7-30-75: Motion to adjourn class action granted. Motion to be returnable Oct-15-75. Motion to adj. deposition granted. Deposition to proceed 9-16-75. So ordered. - Metzner, J. m/n

08-25-76 Filed pltf's affdvt. and notice of motion for leave to amend complaint. - ret. 9-3-75

09-02-75 Filed answering memorandum of defendants in opposition to pltf's motion for leave to amend complaint.

09-23-75 Filed memorandum in support of defendants motion under Rule 37(a)

09-23-75 Filed defendants affdvt. and notice of motion to compel under Rule 37(a) -- ret. 9-30-75

09-23-75 Filed defendants affdvt. and notice of motion to compel under Rule 37(a) -- ret. 9-30-75

09-23-75 Filed MEMORANDUM that motions by plaintiff to compel, for class action and to file amended complaint are referred to Magistrate Schreiber. So ordered Metzner, J. m/n

09-26-75 Filed Memorandum that the motion of deft. Penn-Dixie to compel discovery is referred to Magistrate Schreiber to hear and report. So ordered. -- Metzner, J. m/n

09-30-75 Filed pltf's affdvt. in opposition to motion by Penn-Dixie, et al., to compel.

10-06-75 PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber

10-10-75 Filed answering memorandum in opposition to pltf's motion for class action.

10-10-75 Filed deft. Penn-Dixie's Affdvt. of Marc P. Cherno in opposition to pltf's motion for class action

10-10-75 Filed by deft. Penn-Dixie affdvts. of Paul M. Montrone and Fred Hausman in opposition to application for class action certification

10-23-75 Filed pltf's reply memorandum in favor of class action certification

10-23-75 Filed pltf's reply affdvt. in support of motion for class action certification.

10-29-75 Filed defendants rebuttal memorandum in opposition to motion for class action certification.

11-03-75 Filed pltf's supplemental affdvt. in further support of motion under Rule 23.

11-11-75 Filed pltfs affdvt. of Gene C. Brewer.

01-08-76 PRE-TRIAL CONFERENCE HELD BEFORE Mag. Schreiber.

01-23-76 Filed defendants' supplemental memorandum with respect to pltf's motion for class action certification.

01-27-76 Filed plaintiff's additional memorandum re certain issues arising out of Rule 23.

06-16-76 Filed DUPLICATE ORIGINAL of Magistrate Schreiber's report.

06-30-76 Filed defts' response in opposition to the Magistrate's report and recommendations dated June 16, 1976.

06-30-76 Filed appendix to defendants' response to the Magistrate's report.

07-27-76 Filed memo end. on pltfs. motion dtd. 8/25/75 to file an amended complaint --Motion granted. So ordered, Metzner, J. m/n

07-27-76 Filed memo end. on pltfs. motion dtd. 7/18/75 for class action -- Motion granted. So Ordered, Metzner, J. m/n

07-27-76 Filed memo end. on deft. Penn-Dixie motion dtd. 9/23/75 for pltf. to answer questions--Motion is marked off as moot. So ordered. Metzner,J.

08-03-76 Filed 1st amended complaint with jury demand.

08-06-76 Filed deft. Penn-Dixie affdt. and notice of motion for class action, ret on: Aug. 19, 1976 at 10 am in Rm. 2201.

08-06-76 Filed deft. Penn-Dixie memorandum of law in support of above.

08-19-76 Filed pltff's memorandum in opposition to deft's request for certification pursuant to 28 U.S.C. §1292(b).

08-20-76 Filed reply memorandum in support of deft's motion for certification pursuant to, 28 U.S.C. §1292(b)

08-24-76 Filed ANSWER of deft. Penn-Dixie Industries to the 1st amended complaint and counterclaim against pltf. Schlick.

08-25-76 Filed Deft. Penn-Dixie Ind., Inc. Notice of Appeal to U.S.C.A. from the order granting plaintiff's motion for class action certification, which order was entered in this action on the 27th day of July, 1976. Copy mailed to Berman and Zivyak, attys. for plaintiff.

08-25-76 Filed defts undertaking for costs on appeal-$250.00-Fireman's Fund.

08-20-76 Filed ANSWER of defts' Castle, Glantz, Jacobsen, Kushner, Marcelle and Morrill to amended complaint.

09-07-76 Filed pltf. Schlick's REPLY to counterclaim.'

09-14-76 Filed notice that the record on appeal has been certified and transmitted to the USCA for the 2nd Circuit.

09-15-76 Filed pltf's amended REPLY to counterclaim.

09-15-76 Filed memo endorsed on motion filed 8-6-76 by deft.: This motion is denied. So ordered -- Metzner, J., m/n

Affidavit of John P. Schlick
of July 14, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION, similarly situated, Plaintiff, -against- PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL M. ESCHEN, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS and JAMES F. MORRILL, Defendants.	73 Civ. 1967 (CMM) AFFIDAVIT IN SUPPORT OF MOTION PURSUANT TO FED. R. CIV. P. 23

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JOHN P. SCHLICK, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action and make this affidavit in connection with a motion pursuant to Rule 23 Fed. R. Civ. P. that this action be declared a class action and that I be designated as representative of the class herein.

2. My attorneys have informed me that I should expect that the defendants will attempt to oppose vigorously my qualification as the class representative for the obvious reason that they fear the consequences of a successful class action. We expect that in order to attempt to disqualify me as a proper class representative, the defendants will claim that I was a director of Penn-Dixie, the principal defendant in this action at a time when some of the shares of Continental were purchased by Penn-Dixie. Some of these shares were purchased during

the more nine months I served as an officer and a director before I resigned because I did not approve of the way in which Mr. Castle, another of the defendants herein, was controlling both Penn-Dixie and wresting control of Continental from its former management.

3. I would like to submit my background for the review of this Court, then discuss the defendants' probable contentions.

4. I received my B.S. degree from New York University in 1937. I became a Certified Public Accountant and became associated with Arthur Anderson & Company as a tax manager from 1943 to 1950. In 1950 I joined U.S. Plywood Corp. and operated in various executive capacities, the last being Executive Vice-President. I was a participant in the merger of U.S. Plywood and Champion Paper Corp. I was associated with that company and its successor until 1968.

5. In September 1968, I became associated with Penn-Dixie as Executive Vice-President for Finances and Administration. I was a director of Penn-Dixie and shortly thereafter, I became a director of Continental Steel Corp. I remained affiliated with both companies for the short period of nine months. I resigned from both companies because I believe that the unorthodox manner in which the companies were operated by Mr. Castle was wrong. I objected to his indiscriminate use of both companies' funds for his personal expenses, the use of a company plane for personal reasons and various other dealings which I believed constituted a highly improper method of operating companies in large measure owned by the public.

6. I was aware that Penn-Dixie was purchasing the shares of Continental and believed that Continental was an excellent company. I bought some Continental shares myself in 1969. At that time, as far as I was aware, there was no plan to merge the two companies to affect any ratio of exchange. I believe the plan or "scheme" as it is called, came about at a subsequent time, when Penn-Dixie was heavily committed to its lenders and doing poorly and Continental was increasing its sales and earnings at a record pace.

7. I commenced this law suit on behalf of all former shareholders of Continental because I believe that they were severely taken advantage of in the merger with Penn-Dixie. I believe that there may well be $20,000,000 of value that the former Continental shareholders have been deprived of as a result of the wrongs alleged in the complaint. I further intend to show that there was, in fact, no possible benefit for or valid corporate purpose served by having Continental merged into Penn-Dixie. It was completely in contravention of the interests of the Continental and its shareholders.

8. My short tenure with the companies, which are the subject of this action, in no way taints my ability to be a proper representative of the class. I did not participate in any of the wrongs alleged in the complaint. As I pointed out previously, during the first twenty-five years of my professional career, a period of which I am particularly proud, I was associated with only two companies. I could only take Penn-Dixie for nine months.

9. I believe that I will be a fair, honest and vigorous representative of the absent class members in this action.

I respectfully urge that this motion be granted.

Sworn to before me this
14 day of July, 1975.

S/
JOHN P. SCHLICK

Affidavit of Marc P. Cherno of
October 10, 1975 and Exhibits
1 through 12 thereto

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

- against -

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL H. ESCHEN, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS, JAMES F. MORRILL,

Defendants.

73 Civ. 1467 C.M.M.

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARC P. CHERNO, being duly sworn, deposes and says:

I am a member of the firm of Fried, Frank, Harris, Shriver & Jacobson, attorneys for defendant Penn-Dixie Industries, Inc. ("Penn-Dixie") in this action. I make this affidavit in opposition to plaintiff's motion for class action certification, for the purpose of attaching hereto as exhibits, for the convenience of the Court, copies of the following documents, which are referred to in the answering memorandum of law submitted in opposition of this motion:

Exhibit Number	Description
Exhibit 1	Transcript of the deposition of John Schlick, taken on July 28, 1975.
Exhibit 2	Minutes of the Special Meeting of the Penn-Dixie Board of Directors held on January 20, 1969 (referred to at page 14 of defendants' answering memorandum).
Exhibit 3	Letter dated January 22, 1969, from John P. Schlick to Carleton Holstrom and Theodore Platz (referred to at pages 14-15 of defendants' answering memorandum).
Exhibit 4	Letter dated January 28, 1969, from Theodore A. Platz, Jr. to John P. Schlick (referred to at page 15 of defendants' answering memorandum).
Exhibit 5	Letter dated January 28, 1969, from Bernard L. Lavery to John P. Schlick (referred to at page 15 of defendants' answering memorandum).
Exhibit 6	Minutes of the Special Meeting of the Penn-Dixie Board of Directors held on June 26, 1969 (referred to at pages 15-16 of defendants' answering memorandum).
Exhibit 7	Letter dated June 18, 1969, from Arthur D. Sporn, Esq. to Penn-Dixie, for the attention of John Schlick (referred to at page 16 of defendants' answering memorandum).
Exhibit 8	Minutes of the regular meeting of the Board of Directors of Continental Steel Corporation ("Continental"), held on January 21, 1969 (referred to at page 18 of defendants' answering memorandum).
Exhibit 9	Minutes of the annual meeting of the shareholders of Continental, held on April 15, 1969 (referred to at page 18 of defendants' answering memorandum).
Exhibit 10	Minutes of the regular meeting of the Continental Board of Directors, held on April 15, 1969 (referred to at page 19 of defendants' answering memorandum).
Exhibit 11	Memorandum dated July 24, 1969, from John P. Schlick to Jerome Castle (referred to at page 21 of defendants' answering memorandum).

Exhibit Number	Description
Exhibit 12	Letter dated October 9, 1969, from John P. Schlick to Jerome Castle (referred to at page 25 of defendants' answering memorandum).
Exhibit 13	Amended verified complaint in Emanuel Trotner, et al., individually and as stockholders and members of Emerald Green Home Owners Association, Inc., et al.v. John P. Schlick, et al., pending in New York Supreme Court, Sullivan County (Index No. 68/1974) (referred to at page 27 of defendants' answering memorandum).
Exhibit 14	Complaint in John L. Weldon and John Schlick, etc. v. Jerome Castle, et al., pending in New York Supreme Court, New York County (Index No. 9354/1974) (referred to at page 46 of defendants' answering memorandum).

WHEREFORE, for the reasons set forth in the answering memorandum of law filed herewith, I respectfully submit that plaintiff's motion for class action certification should be denied.

s/ Marc P. Cherno
Marc P. Cherno

Sworn to before me this
10TH day of October, 1975.

s/
Notary Public

LEONARD G. FLORESCUE
Notary Public, State of New York
No. 31-4502587
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT 1

Transcript of the deposition of
John Schlick, taken on September 4, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

-against-

PENN-DIXIE CEMENT CORPORATION, et al.,

Defendants.

:73 Civ.1467 C.M.M.

----------x

Deposition of the Plaintiff, JOHN SCHLICK, taken by the Defendants pursuant to notice dated July 28, 1975, at the offices of Fried, Frank, Harris, Shriver & Jacobson, 120 Broadway, New York, New York 10005, on Thursday, September 4, 1975 at 10:00 o'clock in the forenoon, before William Davis, a Certified Shorthand Reporter and Notary Public of the State of New York.

NEWROCK REPORTING SERVICE
WILLIAM NEWROCK, CSR
36 West 44th Street
New York, N.Y. 10036
(212) 687-0384

A P P E A R A N C E S:

BERMAN & ZIVYAK, ESQS.,
Attorneys for Plaintiff
450 Park Avenue
New York, New York

BY: JEFFREY ZIVYAK, ESQ.,
of Counsel

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, ESQS.,
Attorneys for Defendant Penn-Dixie
Cement Corporation
120 Broadway
New York, New York

BY: MARC P. CHERNO, ESQ.,
ALAN J. RUSSO, ESQ.,
of Counsel

ARANOW, BRODSKY, BOHLINGER, BENETAR &
EINHORN, ESQS.,
Attorneys for Defendants Castle, Glantz,
Jacobsen, Kushner, Marcelle and Morrill
469 Fifth Avenue
New York, New York

BY: JOSEPH H. EINSTEIN, ESQ.,
of Counsel

oOo

IT IS HEREBY STIPULATED AND AGREED, by and among the attorneys for the respective parties herein, that the sealing, filing and certification of the within deposition be waived; that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

o0o

JOHN SCHLICK, called as a witness by the Defendants, having been first duly sworn by the Notary Public (William Davis) stated his residence as 8 East Place, Chappaqua, New York, and testified as follows:

EXAMINATION BY

MR. CHERNO:

Q Mr. Schlick, the notice of deposition requires that you bring with you to this examination any documents that you have that are relevant to this case. Your counsel tells us that you have no such documents.

A I have no such --

Q Is that correct?

A I have no documents.

Q And we asked your counsel on Monday specifically if we could see in advance any documents which you relied upon in preparing the complaint and the amended complaint in this action and in formulating the allegations in those complaints, and am I to take it that you relied on no such documents?

A Public documents.

MR. ZIVYAK: First of all, let me say

two things. First of all, it was on Tuesday.

MR. CHERNO: You are right. Monday was Labor Day.

MR. ZIVYAK: And secondly the characterization is incorrect. The documents were called for in the notice of deposition.

MR. CHERNO: That embraces the character generally but I will ask the witness specifically.

Q Can you tell us what documents you relied upon in formulating the allegations of this complaint? When I say this complaint, I mean both your original complaint and this proposed amended complaint.

A Public documents such as 10-K's and to my knowledge --

Q Just documents.

A No documents.

Q No documents?

A No documents.

Q All right. That's fine. Do you have a copy of your proposed amended complaint with you?

A I have it but I didn't bring it with me.

Q One of the claims in your new amended

complaint is that Penn-Dixie caused Continental Steel to be charged with salaries and expenses of officers, employees, directors and lawyers of Penn-Dixie and other expenses of Penn-Dixie.

Can you tell us what facts you have to show that any such inter-company expenses were improperly charged by Penn-Dixie to Continental?

MR. ZIVYAK: Mr. Cherno, it is my understanding that the scope of this examination was to determine whether or not Mr. Schlick improperly represents the class within the meaning of Rule 23 of the Federal Rules of Civil Procedure. If that is not your understanding, then we are going to have a very serious problem here this morning.

MR. CHERNO: I have in front of me the amended notice of deposition and it is about as clear a notice as I have ever seen. It is not so limited and I can't conceive on what basis you consider it to be so limited. Mr. Schlick is the plaintiff in this case and he is being examined as such. One of the purposes of the examination is Rule 23. I think that is not the sole purpose. I think it would be much better

for all of us if we attempted to deal with Mr. Schlick today rather than fragment his examination.

MR. ZIVYAK: Then you will have to permit me to run through the file. I was told by my partner that that was the scope of the examination. I will have to take a look at the correspondence.

Off the record.

(Discussion off the record.)

THE WITNESS: These files have been worked over a long period and I did not come prepared for other than what Jeffrey Zivyak told me, that it had only to do with my qualifications as a plaintiff in the case and therefore I don't know that I am going to be able to give you as specific answers at this time as you might require.

Q Just give us the facts that you have as you say in your head now, and if you have later more to give us, then you can give that to us.

A All right.

Q But now, sitting here today, what facts do you have to show that any inter-company expenses

were improperly charged to Continental?

MR. EINSTEIN: You mean any Penn-Dixie expenses.

Q Any Penn-Dixie expenses were improperly charged to Continental.

A I have no specific facts during the time after my resignation from Penn-Dixie, but from conversations with various people I have the knowledge that certain expenses, the use of the plane, allocation of corporate overhead, were charged to Continental

Q Let us get specific. First, tell us who the people are and when you had these conversations.

MR. ZIVYAK: Wait. Excuse me. Several of these conversations and discussions occurred after the commencement of this litigation and occurred in conversations which were fostered in great measure in preparation for the trial of this litigation, and the notes and memoranda and knowledge derived from those conversations are attorney's work product.

MR. CHERNO: You have an amended complaint here which makes all kinds of new allegations and I can't conceive that the basis of those allegations is attorney work product.

If you want to present to the Judge the statement that Mr. Schlick was unable to give one specific, and when asked for specifics about his claim said that all specifics are attorney work product, I can argue that with you. But I am now asking Mr. Schlick for conversations which he had from which he said he derived the information both in his original complaint and in this new document which was served on me two weeks ago.

Q Can you tell us, Mr. Schlick, when was the first of these conversations and who was it with?

A Over a period I have had conversations with Dr. Montrone.

Q And what was Dr. Montrone's relationship with Penn-Dixie or Continental?

A Dr. Montrone was a vice president of Penn-Dixie until approximately, oh, I guess I have got to say until approximately four or five years ago.

Q And when did you have these conversations with him?

A At various times over the years, because I kept a contact with him.

Q When did he first tell you about these

expenses?

A Oh, I would say three or four years ago at a luncheon.

Q 1972?

A I beg your pardon?

Q 1972?

A Somewhere in that area.

Q What did he tell you in 1972, specifics, now?

A Specifically, I don't recall specifically what he told me other than he gave me the basis for believing that there were improper allocations of costs.

Q I have trouble understanding how he could give you that basis without specifics. Did he name any particular cost to you?

MR. ZIVYAK: Objection as to form. Can you rephrase it?

MR. CHERNO: Can you read the question?

(The pending question was read back by the reporter.)

Q I will ask the last part of that question. Did he mention any specific cost to you?

A He mentioned the cost of Penn-Dixie overhead and the accounting services in Pennsylvania where the main

office of the accountant was, which were in part being charged to Continental.

Q What did he say about those costs?

A I don't know specifically what he says, but he did imply that they were excessive.

Q Did you ask him for any particulars?

A No.

Q Did he show you any documents?

A No.

Q What else did Mr. Montrone tell you?

A That he was very happy to get out of Penn-Dixie.

Q Was he asked to leave Penn-Dixie?

A Oh, no. He left of his own accord.

Q What else did he tell you about costs, expenses?

A That,at the moment is all I can recall about the cost.

Q That's all you can recall about costs insofar as they relate to Dr. Montrone or all you can recall about costs at all?

A That is all, yes.

Q You have no other specifics in terms of any cost of Penn-Dixie that you claim was improperly charged to Continental?

A No, I do not.

Q You mentioned in the allegation of your amended complaint the expenses of lawyers of Penn-Dixie. You have no facts whatever to support that; is that correct?

A No, I do not.

Q It is correct that you have no facts to support it?

A That's right.

Q Salaries and expenses of employees of Penn-Dixie, you have no facts whatsoever to support that; is that correct?

A Well, I am aware of salaries, number one, being paid to Jerome Castle as an officer of both corporations, and, I don't recall the specifics, but of certain other employees, I believe Harvey Kushner.

Q You believe Harvey Kushner --

A Received compensation from Penn-Dixie which I believe was excessive.

MR. ZIVYAK: From Continental?

A From Continental. From both corporations.

Q Let me ask you, you know of facts so far as employees, officers or directors costs are concerned that have not been reflected in Continental's

statements; is that correct?

A That's true.

Q You mention at page 15 of your amended complaint public relations costs supposedly incurred for the benefit of Penn-Dixie and charged to Continental.

MR. ZIVYAK: That allegation derives out of our independent research.

MR. CHERNO: I am not asking you questions. This is Mr. Schlick's complaint. He is the verifier of this complaint. He is supposedly the complainant. I will depose you next if you want. Right now I am deposing Mr. Schlick.

THE WITNESS: I would suggest that I did not review everything. I did not come prepared for this.

Q You will tell us the basis of your knowledge now. Public relations costs, you know of no facts to support that allegation; is that correct?

MR. ZIVYAK: Objection to the form.

Q Do you have any facts to support your claim that public relations costs of Penn-Dixie were charged to Continental?

MR. ZIVYAK: His attorneys have gathered

this information.

MR. CHERNO: I am asking Mr. Schlick. That's a yes or no question if I ever heard one.

A No, I have not.

Q Thank you.

Did you, Mr. Schlick, make any investigation of the accuracy of these claims with respect to costs charged to Continental before you verified the original complaint other than what you have told us now?

A No.

Q And did you make any investigation of the accuracy of these claims before you permitted them to be included in the proposed amended complaint?

A Which claims?

Q The claims as to costs improperly charged to Continental.

A No.

Q In this amended complaint, you allege that other incidental costs were charged to Continental when they were actually incurred and were for the benefit of Penn-Dixie. What incidental costs are you referring to, Mr. Schlick?

A Incidental costs of Penn-Dixie employees who -- I am trying to think of any incidental costs at this

point.

Q You can't think. That's fine.

A All right.

Q You first learned about these costs that you referred to, you say, three or four years ago?

A That's right.

Q Did you take any action at that time to protect Continental shareholders?

MR. ZIVYAK: I will object to the question and direct the witness not to answer it.

MR. CHERNO: All right.

Q Did you take any action whatever with respect to your knowledge at that time?

MR. ZIVYAK: It's irrelevant and I will direct the witness not to answer that.

MR. CHERNO: Mr. Schlick is appearing here as the supposed champion of Continental shareholders. We are checking out his championship. We are checking with respect to his lawyers'pecuniary rewards and I can't think of anything more relevant.

MR. ZIVYAK: Same objection. Same direction.

MR. CHERNO: You object to any question

whether he took any step when he found out about these costs?

MR. ZIVYAK: Objection. Same direction.

Q Did you go to anybody at the SEC membership with these?

A No.

MR. ZIVYAK: Same objection. Same direction.

Q Did you go to any stockholders meetings with these facts?

MR. ZIVYAK: Objection. Same direction.

Q Did you go to any directors meetings?

MR. ZIVYAK: Same objection. Same direction.

Q You spoke of the salary to Mr. Castle. Do you have any idea how much time Mr. Castle spends each month on Continental affairs during the time that he is earning his salary?

A Specifically, I do not have the knowledge of how much time he spends, no.

Q Page 5 of your amended complaint speaks of compensating balances.

MR. ZIVYAK: You know, Mr. Cherno, it suddenly occurred to me that your law firm

has filed a memorandum opposing the imposition of, the interposing of the proposed amended complaint and I recall recently reading a transcript in which you, Mr. Cherno, took a very firm position about any discovery falling without the boundries of the pleadings as they exist. So I think it would be appropriate if you confined yourself to the pleadings as they now stand.

MR. CHERNO: Mr. Zivyak, that is fine with me if you are willing to withdraw your class action motion until the question of your right to serve that amended complaint is determined.

MR. ZIVYAK: Hardly.

MR. CHERNO: Because a class action, as we all know, has to be determined as to a complaint. Which complaint are you seeking the class action for? This or the original one?

MR. ZIVYAK: This one. But that class action is subjudice, it is the Section 15 motion.

MR. CHERNO: So you are seeking a class action on this complaint and your motion

was only with respect to the class action motion, so I am not entitled to ask about this complaint?

MR. ZIVYAK: That's right.

MR. CHERNO: Even though you are seeking a class action with respect to this complaint?

MR. ZIVYAK: That's right.

MR. CHERNO: Fine. Make sure you have that down.

MR. ZIVYAK: I will withdraw the last statement. Ask anything your heart desires, Mr. Cherno, within the framework of the appropriate questions.

MR. CHERNO: Thank you.

Q Page 5 of your amended complaint, and this also was found in your original complaint, refers to supposed compensating balances in the sense that you allege that Continental funds were used as compensating balances for Penn-Dixie loans without benefit to Continental.

Can you tell me, Mr. Schlick, what specific facts you have to support that claim?

A The knowledge that Castle was negotiating to borrow from certain of the Continental Steel Company

banks in which the requirements for compensating balances by Penn-Dixie would not be required and therefore it followed that the compensating balances, that the balances of Continental Steel Company would be sufficient as a support for the loan.

Q Do you have any specific facts to support your claim that any such monies of Continental Steel were in fact used as compensating balances for Penn-Dixie loans?

A No, I do not.

MR. ZIVYAK: Mr. Cherno, I just want to ask you a question. Is it your position that a plaintiff's counsel is limited to his plaintiff's knowledge and that he can't do any independent investigation and gathering of the facts?

MR. CHERNO: I am asking Mr. Schlick questions.

MR. ZIVYAK: I can assure you that I have plenty of such information.

MR. CHERNO: Mr. Schlick is the plaintiff here, and I am trying to find out what he knows.

Q What investigations, Mr. Schlick, into the accuracy of the claims with respect to compensating

balances did you make before you permitted them to be included in the public documents?

A My attorneys made investigations and I relied on their statements that such complaints were valid.

Q But you yourself know of no such facts; is that correct?

A That's right.

Q Thank you.

You mentioned earlier that you had had conversations about the expenses matter. I gather this was not included in any such conversations. By this I mean compensating balances.

A No.

(Witness and counsel confer.)

A Yes, I recall now. I had a conversation with a Mr. Weldon, who was a director up until a certain time of Continental Steel, who told me that such activities with the banks for the benefit of Penn-Dixie did in fact take place.

Q Can you tell me when you had this conversation with Mr. Weldon?

A In the past, oh, I would say in the past year or so, year or two, when Mr. Weldon was in New York.

Q And did he give you specific banks and

specific numbers?

A No. The only bank, he mentioned something with respect to Continental making certain deposits in Franklin or the use of the Continental Illinois bank.

Q Did he give you any documentation of those claims?

A No, he did not.

Q Both of your complaints, Mr. Schlick, refer to a Florida real estate transaction; is that correct?

A Yes.

Q Can you tell us any specific facts which you have to support your allegation that this transaction was designed solely for the benefit of Penn-Dixie as a way of repaying a favor to a friend? I think those are the allegations in your complaint.

A Yes. I had a phone conversation with a Fred Hausman.

Q Do you want to spell that for the reporter?

A Well, H-a-u-s- -- I don't know if it's m-a-n or two s's, m-a-n, who at the time had been involved in the Ohio operations. I can't think of the name of the subidiary, and who had also been delegated by Mr.

Castle to become involved in real estate. Now, Mr. Aranow -- Aranow or --

MR. ZIVYAK: Aranoff.

A Aranoff-- had been the recipient of many such what I will call improper favors.

Q Are you talking from your own knowledge now or is this what Mr. Hausman told you?

A I am talking, if you want to be specific I will be very specific.

Q I definitely want you to be.

A For example, when Penn-Dixie Leasing was formed as a subsidiary of Penn-Dixie Corporation, certain stock was sold to certain people at the incorporation, one of whom was Mr. Aranow. Then the stock, 10 per cent of the corporate stock of the leasing company was distributed to Penn-Dixie shareholders, which made a market for the Penn-Dixie Leasing Corporation. The stock went to 18, but began to fall, and while it was falling Mr. Castle arranged for Mr. Aranow to sell his stock to the Penn-Dixie pension trust at 18.

After objecting to the transaction with the pension trust, because the val as nowhere near that, he then had it taken out of the pension trust and repurchased by Penn-Dixie Cement Company and the stock

today is either nominal or of no value -- I don't know.

On other occasions, I believe there was a mortgage on a plant in Michigan granted whereby Mr. Aranow received certain favors for guaranteeing that mortgage or in some way participating in the mortgage.

Q Is this what Mr. Hausman told you, Mr. Schlick, or is this --

A No, this I know.

Q This took place --.

A This I know of my own information.

Q This took place when you were with the company?

A The Penn-Dixie Leasing stock took place when I was with the company.

Q All right. Let's continue. Let's home in on this specific Florida transaction, if you will.

A All right. The Florida transaction with respect to the conversation with Mr. Hausman was that Mr. Aranow was having a cash and financial problem with respect to the Florida real estate and Mr. Castle arranged that Continental Steel would joint venture it with them.

Q And did Mr. Aranow give you any further specifics? I am sorry, did Mr. Hausman give you any further specifics of that transaction?

A He implied or he indicated that it was not a, in his estimation, a profitable or potentially profitable deal.

Q Do you have any facts which indicate that the land that you say was purchased was worth less than what Continental paid for it?

A When you say purchased, land, of course, is something that if it's in some state of potential development, its value is only related to the potential profitability, and based on the conversations I had, I felt the value placed on the land at the time it was put into the venture was not equal to the value that was paid for it.

Q And what facts do you have to support that feeling?

A Only conversations.

Q That is one conversation with Mr. Hausman?

(Witness and counsel confer.)

MR. CIERNO: I am going to object to this continual conferring with counsel on factual answers. I would like to get Mr. Schlick's answers. We will depose you late,

Mr. Zivyak.

A I have been involved very deeply in the land development business and I am aware of some of the problems in land developments and therefore, based on the conversation I had with Mr. Hausman, my own opinion and my own evaluation led me to the conclusion that it was not a profitable way in which Continental Steel should have invested their money.

Q What facts about the land and its value are you relying on for that conclusion?

A The facts that were spelled out in an annual report and, as I recall, the only facts were based on what was publicly announced, either through the annual report or a news item.

Q And you are relying on no facts other than those that were publicly announced; is that correct?

A That's correct.

Q Do you have any idea whether or not Continental had an appraisal of the land that was purchased?

A I do not know but I doubt it.

MR. CIERNO: You doubt it.

MR. ZIVYAK: Could I just take a two-

minute recess.

(Whereupon a brief recess was taken.)

A One of the clarifications with respect to cost, I want to point out that with respect to any allocation with respect to cost of Penn-Dixie to Continental by reason of general overhead, I would have to point out that whatever percentage was used would include a percentage of cost incurred by Penn-Dixie, which were not proper costs of Penn-Dixie, and I am referring specifically to the personal use of funds and assets by Gary Castle for personal use.

Q Let me ask the same question again.

A Yes.

Q Do you have any facts to show that any single expense, personal or otherwise, was charged to Continental improperly? Fact.

A The fact is through the allocation of overhead of Penn-Dixie, in which these costs were included, I can be specific about the cost, about the improper cost.

Q I want to know if you have any fact to support your allegation that any one cost of any kind or nature was improperly charged to Continental.

A All right. I can only answer it in this way,

that I know of costs incurred by Penn-Dixie which were improper, and I can only conclude that by reason of allocation of overhead cost of Penn-Dixie's corporate office that such improper costs were indirectly charged to Continental.

Q Do you have any facts to support the statement that Penn-Dixie allocates any overhead costs to Continental?

A Only conversation that I referred to earlier.

Q That's the conversation with Mr. Montrone?

A Yes.

Q And if I told you that Penn-Dixie allocated no overhead costs to Continental, you would have no facts to the contrary?

A If you told me that and it was true, I would have no --

Q You would have no facts to the contrary?

A No.

Q All right. Fine. Let's come back to Florida. What facts do you have to support your claim that Continental suffered a loss as a result of this transaction?

A If I can define loss as including loss from return on the cash invested, I say because I believe the

transaction was finally unscrambled in which Continental got all or most of its money back, that the loss incurred was the loss from the inability to use those funds in their regular business.

Q But as far as you know, Continental did not suffer a loss as that is generally defined; is that correct?

A A loss on the transaction without a return for the use of the money? So far as I know, they did not suffer a loss.

Q In fact, do you have any facts which indicate that Continental did not make a gain as a result of the transaction?

A A conversation with a Mr. Weldon indicated to me that tb ansaction in effect was more or less of a wash witnout gain.

Q When did you find out about this?

A In the conversations with Mr. Weldon in the past year or so.

Q In the past year or so?

A Yes.

MR. CHERNO: Excuse me, enough coaching of the witness. Really, I have never seen it in a deposition this blatant.

A Probably in the last two or three years.

Q Probably in the last two or three years?

A Right.

Q When you were associated with Penn-Dixie and Continental, did you ever discuss the possibility of Continental investing in real estate or making similar types of investments?

A Never.

Q Was that ever discussed in your presence?

A Never.

Q Did Mr. Weldon tell you that he had opposed this transaction?

A I don't recall that he did or he didn't.

Q Did he tell you that he supported the transaction?

A I don't recall whether he ever did.

Q Your initial complaint, Mr. Schlick, contained a claim that the Continental Pension Fund had purchased Penn-Dixie stock for the purpose of manipulating the price of Penn-Dixie stock. What factual -- strike that. Strike the last part.

Can you tell us any specific facts which you have in support of that claim?

A The conversations with Castle prior to my

resignation with an attempt by him to get the trustee of the pension trust changed, which I believe was ultimately done, for the purpose of investing some of their funds in Penn-Dixie stock. Beyond that point I do not, I only concluded that such transactions took place.

Q You surmised; is that correct?

A That's right.

Q You had absolutely no fact to support that claim; is that right?

A As to that specific transaction, as to specific transactions I have no knowledge.

Q And now you know that claim has no factual basis whatever; is that correct?

A That is true.

Q Can you tell us what investigation you made into that claim before you determined to put it into a public document and make a public charge against the company?

A No investigation.

Q All right. Your original complaint, Mr. Schlick, contained a claim that the method of valuing Continental's inventory had been changed from average cost to last in, first out. What facts did you have

at that time in support of that claim?

A I believe -- I am trying to recall. I know there were certain classifications of Continental Steel which had been on less than first out and to the best of my knowledge, and I don't recall the source, that they had made certain further switches from average cost to last in, first out, and I do not recall at this point because I didn't come prepared to answer all these questions on this complaint.

Q Do you know now of any fact which supported that allegation when it was made?

A I believe -- unless I review the records, I do not know at this time. I can't answer the question at this time.

Q What records would you have to review, Mr. Schlick?

A I would have to review their 10-K's and annual reports.

Q That's what the claim you think was based on, a reading of their 10-K's and annual report?

A I believe so. I am not sure.

Q That complaint is now gone from your amended complaint. Did you find there was no basis for it?

A It may be that we did not find what I felt was a basis for the complaint.

Q Did you look before you verified the initial complaint?

A I thought I looked, and as I say, I may have misinterpreted what I saw.

Q On page 7 of your amended complaint, you claim that Continental Steel made a loan to Penn-Dixie and, I will quote, "was not adequately compensated for granting the aforesaid loan." End quote.

Can you tell us any specific facts which you have to support your claim that Continental was not adequately compensated for granting the loan you referred to?

A The information was investigated by the attorneys and in reviewing with them the information, it appeared that the interest charged was not commensurate with what Penn-Dixie would have to pay for similar additional borrowings to their already heavy credit situation.

Q Could you tell us what the compensation to Continental was for that loan?

A I believe -- no, I -- I believe it was less than an adequate rate.

Q I want a specific, Mr. Schlick.

A Well, I would have to go back and look at the records which I don't have, and again, as I told you before, I wasn't prepared for this meeting. I did not review the files and I came here only on the basis with respect to my qualifications as a plaintiff.

Q Mr. Schlick, this document was served on us two weeks ago. It's not ancient history.

A But it's --

Q You have put in a public document the claim that Continental was not adequately compensated for a loan. I want to know what facts you had to support that charge.

MR. ZIVYAK: Do you want to start over and lower your voice?

MR. CHERNO: I will be glad to comply with your request.

MR. ZIVYAK: I didn't ask you to shout.

Q What facts did you have two weeks ago when you determined to make a public charge in a public document that Continental was not adequately compensated for making a loan to Penn-Dixie?

A At this moment I do not recall the facts.

Q Fine. Do you know whether this loan was a secured or an unsecured loan, Mr. Schlick?

A I can only believe that it was an unsecured loan, and again in reviewing the documents, would I be able to say that it was unsecured, but knowing Penn-Dixie's credit problems, it would have to be pretty much unsecured or subordinated.

MR. CIERNO: Could I hear the last answer.

(The answer was read back by the reporter.)

Q But you know of no facts for saying it was unsecured, you are relying on your recollection; is that correct?

A At this time I would have to say I don't.

Q When did you first hear of this loan, Mr. Schlick?

A In discussions with my attorneys who had investigated and revealed this information.

Q In other words, your attorneys told you about this loan?

A That's right.

Q That's just fine. Do you know how the interest rate on this loan compared to the prime rate?

A Again, I don't know at this time unless I refer back to the records.

Q Do you know how the interest rate on this

loan compared to the return that Continental was getting on its other investments, Mr. Schlick?

A Return on excess cash is one thing.

Q That's my question, excess cash.

A I don't know what you mean by return.

Q I am sorry. I will make the question more precise.

Do you know how the return on this loan compared to the return that Continental was making on its other excess cash investments?

A I don't know.

Q And can you tell me what investigation you made into the accuracy of this charge before you determined to put it in a public document?

A Only my review with my attorneys who had --

Q And what did that review consist of?

A It consisted of conversation primarily of the information they had investigated.

Q Did that conversation mention the interest rate?

MR. ZIVYAK: I am going to object to any questions concerning any conversations between attorneys and clients.

Q Page 9 of your amended complaint, Mr.

Schlick, refers to a loan made by the Continental Pension Fund to Penn-Dixie. Can you tell us what specific facts you have to support your claim that the Continental Pension Fund was not adequately compensated for making that loan?

A Again, information given to me by the attorneys who had investigated.

Q Do you personally know any facts of your own knowledge?

A No.

Q Do you know what the interest rate on that loan was?

A No.

Q Do you know how that interest rate compares with the other interest rates that the pension fund was making on its investment?

A I don't recall the interest rate. I was making a comparison.

Q Did you attempt to make such a comparison before you made this charge?

A I believe we reviewed the situation at this time and came to the conclusion for which at this moment I do not have the facts.

Q That time was two weeks ago.

A Oh, no, the complaint was finalized I believe two weeks ago, but it was maybe a few weeks before that.

Q So within the last month.

A That's right.

Q But you don't recall the interest rate and you don't recall what the comparisons were --

A That's right.

Q -- with the other monies.

Did you look into the question of whether other pension funds had made similar loans to Penn-Dixie?

A Other pension --

Q Other pension funds of other companies.

A Unrelated?

Q Unrelated companies.

A No.

Q Is it an unusual occurrence in your opinion for a pension fund to make a loan to another company?

A It is an unusual situation except where such loan is a long-term, secured loan with a company of high rating.

Q Do you know whether this was a secured or

unsecured loan?

A I believe it was unsecured.

Q What facts do you have to support that conclusion?

A At this time I have no facts.

Q If I told you it was secured you would have no facts to the contrary?

A That's right.

Q Were these loans fully disclosed in Continental's proxy statements, Mr. Schlick?

MR. ZIVYAK: I will object. It calls for a legal conclusion.

A I don't recall.

Q Were the facts relating to these loans disclosed in the Continental proxy statements?

A I don't know.

Q Did you read the Continental proxy statements for the years 1970 and 1971?

A I believe I did.

Q You don't recall whether there was anything about those loans?

A No.

Q After reading those proxy statements, Mr. Schlick, did you take any action?

MR. ZIVYAK: I will object to the question.

Q With respect to any of the matters contained therein?

MR. ZIVYAK: I will object to the question and direct the witness not to answer.

Q Did you go to the SEC?

MR. ZIVYAK: Objection and direct the witness not to answer.

Q Did you bring it to the attention of Continental shareholders?

MR. ZIVYAK: Objection and I direct the witness not to answer.

Q Is it your claim, Mr. Schlick, that Penn-Dixie intentionally caused a strike of Continental's employees so as to decrease Continental earnings in anticipation of the merger?

A That, when you say caused the strike --

MR. ZIVYAK: No, I think the operative word is "intentional."

MR. CHERNO: Will you read the question? I think it is clear.

(The pending question was read back by the reporter.)

A I can't state that they caused the strike intentionally.

Q That's not your claim?

A No.

Q When did you first hear about this strike, Mr. Schlick?

A I believe I heard about it in newspaper or conversation. I don't recall.

Q Back in 1971?

A Right.

Q Did you hear about it at the time you prepared your origjnal complaint?

A I believe I heard about it, yes.

Q You didn't put it in there, did you?

A No.

Q Is it your claim that Continental Pension Fund was ever actually managed by Penn-Dixie personnel?

A I believe that the pension fund of Penn-Dixie -- of Continental Steel, that the trustees were changed and that the officers of Continental who also were officers of Penn-Dixie had powers of investment with respect to the change in the trustees and that Mr. Castle directed any particular investments that might

be made other than -- that were -- I wouldn't say irregular, but in other words, I would say that Mr. Castle took a hand in the investment policy of the Continental pension fund. I can't say that --

Q All right. That's not my question.

Is it your claim that anyone other than a bank was the trustee of the Continental pension fund during this period?

A I can't answer factually because at the time I left, Mr. Castle was in the process of changing the trustee or the trustees' powers with respect to investment.

Q Do you have any facts to support a claim that anyone other than a bank was ever the trustee of the Continental pension fund? Yes or no.

A I got to explain because when you say trustee, are you implying with exclusive power of investment? Exclusive power of investment?

Q I think the term "trustee" is a fairly well deinfed term that you as a sophisticated financial person, Mr. Schlick --

A I disagree with you.

Q -- can well understand.

A I disagree with you. You can have a trustee

and you can still have the powers of direction available to the directors as well as the trustee.

Q Binding powers of direction upon the trustee?

A I beg your pardon?

Q Are you suggesting where there are binding powers of direction upon the trustee as to what investments to make?

A There can be binding directions to a trustee.

Q Are you suggesting that that was what happened here?

A I am being knowledgeable in the case of the Penn-Dixie, including the Penn-Dixie pension plan, that the Penn-Dixie had a trust that Mr. Castle directed the trustee as to the purchase of securities.

Q I am talking about the Continental pension fund.

A I have no facts as to whether or not there was anything other than, a trustee with exclusive powers. All right.

MR. ZIVYAK: Excuse me, when you were saying Penn-Dixie, did you mean to say Continental just now?

MR. CHERNO: I think he meant Penn-Dixie.

THE WITNESS: No, the last question you asked me about Continental I meant specifically Penn-Dixie.

MR. CIERNO: Can you read back that question and answer.

(The record was read back by the reporter.)

Q Do you have any idea how the Continental Illinois Bank was performing as the trustee of the Continental pension fund? Let me make that clearer.

Do you have any idea how the value of that fund was faring under the trusteeship of the Continental Illinois Bank?

A Was varied from what?

Q How the value was faring, let us say in 1969 and 1970.

A No, I do not.

MR. ZIVYAK: I think he misheard the question. He wants to know how they were doing; is that correct?

MR. CIERNO: Yes.

THE WITNESS: I don't know how they were doing. That's a pretty short period to evaluate a pension fund unless you evaluate it

with respect to all other pension funds.

Q In your opinion, are there reasons why it is more desirable to have a pension fund maintained as a separate fund rather than as part of a common trust fund?

MR. ZIVYAK: Objection. Irrelevant.

MR. CHERNO: The allegation is in this complaint. I didn't make them up.

MR. ZIVYAK: All right. Answer it.

THE WITNESS: Repeat the question.

MR. CHERNO: Repeat the question.

(The pending question was read back by the reporter.)

A Since I am fairly knowledgeable in the area, I want to understand what you are asking me. Do you mean a separate fund in which cash or assets are invested separately or are invested into a comingled investment fund of securities? I don't understand what you mean.

Q One of the allegations of your amended complaint reads as follows, page 8, at the bottom: "On May 5, 1970, the funds were removed from the Continental Illinois National Bank & Trust Company's commingled account and established as separate funds under the

bank's trusteeship."

My question relates to that allegation.

In your opinion are there reasons why it would be desirable to remove funds from a comingled account and to have them established as separate funds?

A I think the reference is really with respect to the next sentence.

Q Well, answer my question as to that sentence and then I will go to the next sentence.

A Depending how it is directed, it can be an advantage or no advantage, again, but the next sentence refers to the change of, the establishment of an investment committee.

Q We have been into that. Let's just deal with the first sentence. There is no plus or minuses in that as far as you are concerned?

A It's hard to tell. I mean, I don't know whether there would be or not. If you are talking theory, no. All right?

Q Did you take any action with respect to these matters when you heard about them in 1971?

MR. ZIVYAK: Objection and I direct the witness not to answer.

Q Did you bring them to the attention of Continental shareholders?

MR. ZIVYAK: Objection and direct the witness not to answer.

Q Did you make any statement to the Continental board or the Continental shareholders about this?

MR. ZIVYAK: Objection and I direct the witness not to answer this.

Q Did you bring this to the attention of the SEC or any regulatory agency?

MR. ZIVYAK: Objection and I direct the witness not to answer.

Q Is it your position, Mr. Schlick, that Continental Steel should have paid the same dividend in 1969 that it paid in 1968?

A It was my opinion that they should have paid the same dividend.

Q Were you voting contrary to your opinion when, as a member of Continental's board in 1969, you voted for a much smaller dividend?

A Yes, on the basis that, as I recall, on the basis that Mr. Castle only wanted unanimous opinions and it was one of the factors amongst which caused my

resignation.

Q In other words, you cast a vote which was contrary to your opinion and beliefs as to what was in the best interests of Continental shareholders; is that correct?

A Yes.

Q What facts do you have to support your claim that the purpose of the decrease in Continental's dividend was to decrease the market price of Continental shares?

A Only opinion, not fact.

Q Your personal opinion?

A Personal opinion tied to conversations of a general nature that were carried on with Mr. Castle.

Q No specific facts; is that correct?

A No specific.

Q What percentage of a dividend pay-out do you think is appropriate for a steel company?

A I would say a steel company such as Continental Steel, somewhere in the neighborhood of 50 per cent over an extended average period, not changing from year to year based on one drop in earnings. So this means you could have had a higher percentage in some years and a lower percentage in others.

Q You knew about this reduction in dividend in 1969; did you not?

A I believe so, yes.

Q You knew about it in 1973 when you formulated your initial complaint; did you not?

A Yes.

Q Can you tell me why you didn't include it in your original complaint?

MR. ZIVYAK: Objection. Irrelevant.

MR. EINSTEIN: Are you directing him not to answer?

MR. ZIVYAK: Yes, I am directing him not to answer.

Q At that time you didn't think that was anything that anyone had done wrong; is that correct?

MR. ZIVYAK: Objection. Argumentative and irrelevant.

Q What specific facts do you have, Mr. Schlick, in support of your allegation that Continental Steel was caused to sell steel products to Penn-Dixie or its subsidiaries or affiliates on terms more favorable to Penn-Dixie than to non-affiliated companies?

A Continental Steel sold reinforcing bars to the

Hausman Company -- I believe that's the name, when I referred to Fred Hausman over there, which had a number of warehouses for the sale of that throughout the country, and to my knowledge there were longer credit terms extended through the inter-company process to Hausman than was general to other customers.

Q You say that is to your knowledge?

A That's right.

Q Can you tell us how you came by that knowledge?

A Well, I was involved in not only, in the Fred Hausman operations to some extent, and was aware of their purchases from Continental Steel during my tenure.

Q So your testimony is that this took place during your tenure?

A Yes. And I have no reason to believe it was --

Q But you have no facts whatever to support --

A No facts.

Q No facts to support that other than the claim that there were conditions or terms of any other nature that were different in the sales between Continental and Penn-Dixie than there were between Continental and non-affiliated companies?

A I have no specifics.

Q What investigation did you make of the accuracy of these charges before you determined to put them in a public document?

MR. ZIVYAK: Objection to form. Direct the witness.

Q What investigation of the accuracy of these charges did you make?

A Other than what took place during my tenure?

Q Yes.

A No.

Q What facts do you have to support your claim that Penn-Dixie's repurchase of its debentures was, and I will quote, "made solely to dress up the Penn-Dixie statement of income," end quote?

A Mr. Castle's conversations while I was there that this was a proper, this was a -- I shouldn't use the word "proper" -- this was a method of inflating the profits and his indication that such method would be used when the time came and such method was used when the company could ill afford the use of the cash.

Q Mr. Castle, this is in a conversation between you and Mr. Castle?

A While I was involved with the company.

Q While you were involved with the company?

A That's right.

Q Do you have any facts beyond that?

A No.

Q When did these conversations take place?

A It was I think between '68 and '69 when, while I was with the company.

Q Do you have any idea what the Penn-Dixie debentures were selling for at the time they were repurchased?

A Much below their face value.

Q And were there a number of companies during this period repurchasing debentures that were selling much below their face value?

A A number of companies with excess cash were purchasing their debentures.

Q That was a very common phenomenon in 1971-1972 period; is that correct?

A Right. For the use of cash.

Q At page 16 of your new complaint, you allege -- this is paragraph I, miscellaneous income includes -- this is for Penn-Dixie.

MR. ZIVYAK: Oh, down here.

MR. CHERNO: Yes. It's a very hard numbering system.

MR. ZIVYAK: There is a typo. "i".

MR. CHERNO: I don't think it's a typo.

MR. ZIVYAK: There should be an "I" and then two little "i"s.

Q The claim is that miscellaneous income includes other non-recurring income not properly accounted for by its inclusion above the line. Tell us what items of non-recurring income you are referring to.

A I don't recall.

Q You don't recall.

Do you recall what year's income statement you are referring to?

A No, I don't recall.

Q Did you make any investigation into this claim before you permitted it to be included in this document?

A No, I don't recall the inves--- other than reviewing the documents, their annual reports in that case, I don't recall any specific knowledge at this time of these things.

MR. ZIVYAK: Off the record.

(Discussion off the record.)

Q I show you this document, Mr. Schlick, and ask you if you are familiar with it.

A Yes, I am familiar with it.

Q What is it?

A It is a document referring to my qualifications.

Q Did you prepare that document?

A I beg your pardon?

Q Did you prepare that document?

A My lawyers prepared that document.

Q Did you sign the document?

A Yes.

Q And review it before you signed it?

A Yes.

MR. CHERNO: I would like this marked as Defendants' Exhibit 1.

(Copy of affidavit in support of motion was marked as Defendants' Exhibit 1 for identification, as of this date.)

Q YOu were with Penn-Dixie for about ten months; is that correct?

A Nine to ten months.

Q From about October of '69 to about July of 1970?

A Right.

Q Is that a fair time period? And is it fair to say that you describe in your affidavit what you might call a process of disenchantment with Penn-Dixie; is that a fair characterization?

A It's an understatement.

Q Had you come to this view, let us say, two months into your service?

A I would say roughly half way through.

Q About four months into your service?

A Four or five months.

Q Were you also a director of Continental Steel during some of this period?

A Yes.

Q Do you recall whether you were a director of Continental Steel in July of 1969?

A In July of '69?

Q Yes, sir.

A Well, I left in July and I don't know whether -- it may have been on July 1st, I may still have been a director.

Q Let me show you this document and ask you whether it refreshes your recollection as to when you ceased to be a director of Continental Steel.

A August 21st, yes.

Q Is that a letter you wrote?

A Yes, that's a letter I wrote.

Q Dated?

A August 21st.

Q August 21, 1969.

A Right.

Q And is that the letter whereby you resigned as a director of Continental Steel?

A I believe so.

MR. CIERNO: I would like this marked.

THE WITNESS: Now, there may be another record to Penn-Dixie of resignation which might have referred to and all affiliations with subsidiaries, and I don't recall. As I say, I believe somebody asked for this specifically after I had resigned. Now -- so whether or not my resignation was in a blanket letter to Penn-Dixie, I don't know, but I do not recall attending any meetings or actively participating as a director after I resigned from Penn-Dixie.

Q Do you have any copy of any record or other letter other than this which you may have written to resign from either of these companies?

A I may have. I don't know. I will look at my

files.

MR. CHERNO: I will make the request that you make a search for it.

MR. ZIVYAK: We will make a search.

THE WITNESS: But it was pretty obvious from the notice in the newspapers at the time I resigned that I did resign. But I believe this was asked for for some specific reason back about that time.

(Letter dated August 21, 1969, by Mr. Schlick, was marked as Defendants' Exhibit 2 for identification, as of this date.)

Q I show you a memorandum dated July 24, 1969. It is headed Mr. Jerome Castle, John P. Schlick. The title of the memorandum is "Hausman Corporation," and it's signed on the bottom of the second page John P. Schlick, and I ask you whether you wrote this memorandum, Mr. Schlick.

A Yes.

MR. CHERNO: Can I have that marked.

(Memorandum dated July 24, 1969, entitled "Hausman Corporation" signed by John P. Schlick, was marked as Defendants' Exhibit 3 for identification, as of this date.)

Q Is it fair to say that in this memorandum, Mr. Schlick, you recommended and suggested to Mr. Castle the names of several persons to be put on the Continental Steel board? Take a look at the bottom line of that.

A Yes.

Q Was one of those persons Mr. Harvey Kushner?

A He received a copy of --

Q Oh, I am sorry. It's not Mr. Kushner. Who is Mr. Kushner?

A He is down here as a recipient. He was a vice president of Penn-Dixie.

Q On the second page of this memorandum, is it also fair to say you suggested to Mr. Castle that Mr. Harvey Kushner replace you on the board of directors?

A Right.

Q Is that the same Mr. Kushner that is a defendant in this action?

A Yes.

Q Go to the middle of page 1 and there is a line which reads "I think it would be to your advantage to sell the Hausman fabricating operations to

Continental-Phoenix without the forms division."

Can you explain to me what you meant by that line?

A What I meant by that line? The forms division was a disaster and should have been liquidated. It was losing money and therefore I did not feel that that was a proper as to sell to Continental. It was in effect not that related to the warehousing of steel bars and related items and therefore in eliminating the forms division you would have a viable asset to sell to Continental.

Q And you also thought it was to our advantage to sell the fabricating operations of Hausman to Continental?

A That is the Hausman operation other than the forms division.

Q When you used the words "our advantage," who was the "our" that you were referring to? Referring to Penn-Dixie?

A Well, the implication was there the forms, the fabricating division, Hausman was two pieces, one the fa bricating division which represented all these houses, these warehouses, and the forms division which was a separate division operation that was losing its

shirt. In recommending the sale we would thereby eliminate the loss which may have incurred through the liquidation of Hausman, and therefore that is the reference to the advantage, the fact that you had, you could do better selling it than you could liquidating it.

Q Was part of the advantage your feeling that "We could get a slight premium over the book value of the fabricating division"?

A That is true, because the fabricating division could show a profit.

Q So the advantage, one of the advantages which you saw was that Penn-Dixie could sell to Continental the Hausman fabricating division at a slight premium; is that --

A Right.

Q -- fair to say?

A Over book value.

Q All right.

A Based on earnings. As I recall I said in there -- based on the profits you could get a slight premium.

Q I show you a letter dated October 1, 1969, on the letterhead of John P. Schlick. The

salutation is "Dear Jerry," and it is signed "Sincerely, John," and I ask you whether you wrote this letter.

A Yes. Yes.

MR. CHERNO: Will you mark this, Mr. Reporter, please.

(Letter dated October 1, 1969, on the letterhead of John P. Schlick, signed "Sincerely, John," was marked as Defendants' Exhibit 4 for identification, as of this date.)

Q Is the "Jerry" referred to Mr. Castle?

A Yes.

Q And was this letter written about three months after you left Penn-Dixie, Mr. Schlick?

A Two months.

Q November. October. It's two months after you left Penn-Dixie, it's fair to say?

A Yes.

Q Can you tell us what meeting this letter refers to? Let me read the second paragraph of the letter for the record. "I am sorry you were unable to have me at your meeting with Manufacturers Hanover, but I am sure you were able to handle it satisfactorily."

A I don't recall. I know there were some conversations going on at this time with Manufacturers

Hanover, but at this time I do not recall the specifics of the situation.

Q Was that a meeting, to the best of your recollection, that related to Continental Steel?

A To the best of my recollection, I can't believe it referred to Continental Steel.

Q Or to Penn-Dixie?

A I am sure it, probably it involved either Penn-Dixie or it involved Penn-Dixie Leasing. To the best of my knowledge.

Q When you wrote to Mr. Castle in the last line, "If I can be of any further use, let me know." Were you sincere in that sentiment?

MR. ZIVYAK: I will --

A I can answer it.

MR. ZIVYAK: All right.

A I had no objection to doing unofficial consulting for Penn-Dixie if he wanted me to where I would not be involved in the potential liability of an officer or director.

Q And you had no objection to continuing to take Penn-Dixie's money for consulting services; is that correct?

A That's true. Slow pay.

Q By the way, when you left Penn-Dixie, did you request of Mr. Castle that Penn-Dixie purchase back your Continental shares?

A I did not.

Q You don't recall any such conversation?

A I don't recall asking them to purchase back my shares.

Q Do you recall having any such conversation with anyone else at Penn-Dixie?

A No, not to the first -- no, I had none.

Q In the course of your nine months with Penn-Dixie, nine or ten months, did you ever discuss with anybody at Penn-Dixie the possibility of a merger between Penn-Dixie and Continental?

A I believe I had, I have to use the term general conversations, with both Montrone and with Castle that the ultimate approach would be to have a merger with Penn-Dixie.

Q Can you recall in any more detail the substance of those conversations?

A No, other than again the generalities that this was pretty well implied in Castle's conversation, that this eventually is what would take place, but in my tenure with the company that was basically the

transition from no control, or rather less than control of Continental to over the 50 per cent control, and this was a transition period.

Q Did you have similar general discussions with Mr. Castle or with anybody else about the possible terms of any such merger?

A No.

Q Let me show you a document entitled or headed "Agreement Made this 15th Day of October 1968, Between Penn-Dixie Cement Corporation" and so forth, and John Schlick, and let me ask you whether you are familiar with it.

A Yes, I am familiar with the document.

Q Is that your employment contract with Penn-Dixie, Mr. Schlick?

A Yes.

Q Do you have a copy with that?

MR. RUSSO: I have one. We will have this one marked.

(Copy of employment agreement was marked as Defendants' Exhibit 5 for identification, as of this date.)

Q Is it fair to say, Mr. Schlick, that paragraph 3 of that agreement provides that if after

one year from the date of the contract, which was October 15, 1968, you were no longer employed as executive vice president and chief administrative officer of Penn-Dixie, you would nevertheless be employed by the company in some other capacity for four years at a salary of $32,500 per annum?

A Right.

Q Did you have any discussions about that provision with Mr. Castle?

A None.

Q Or anyone else when you left the company?

A None whatsoever. In fact, Mr. Castle told me that he was appreciative of the fact that I wasn't trying to enforce the contract, which I felt --

Q You said you had no discussions and now you are indicating to me that you had a discussion.

A About maintaining the requirements under the contract.

Q When did you buy your Continental stock, Mr. Schlick?

A Either late '68 or very early '69.

Q And what prompted that purchase?

A Mr. Castle said there was certain shares

available and he was buying 1,000 shares and I would -- and he asked me to buy 1,000 shares, which I did.

Q And what did you pay for those shares, do you recall?

A Well, do you want to talk in terms of the current --

Q If we could try to translate volumes and prices into the post-stock dividend prices.

A All right. The original shares were bought at $40 a share for $40,000, which were then split two. for one which made the price $20 a share.

Q Did you buy these shares in the open market, Mr. Schlick?

A No.

Q How did you buy them and what were the circumstances?

A I bought them privately from an individual but through a broker on the New York Stock Exchange.

Q Did you sell these shares in 1969 after you say you came to the conclusion that Penn-Dixie was engaged in a highly improper method of operating companies in large measure owned by the public?

A No, I didn't sell them.

Q Did you sell them in 1970 after you read

in the Continental proxy statement about its loan to Penn-Dixie?

A No.

Q Did you sell them in 1971, the year of the strike involving Continental Steel?

A No.

Q Did you sell them in 1972 when this proposed merger was first announced?

A No.

Q How did you dispose of them, Mr. Schlick?

A I disposed of them after the merger became effective and that was done over -- I didn't -- I disposed of the shares I received in the merger.

Q In other words, you exchanged your shares for Penn-Dixie shares?

A That's right.

Q In the merger?

A They exchanged them. I didn't.

Q In any of these years, and by these years I mean 1970, 1971 or 1972, did you attend Continental shareholders meetings?

A No.

Q Did you vote in the elections held in the years 1970, '71 and '72 for the directors of the

Continental?

A No.

Q In none of those years?

A No.

Q You didn't vote for or against the directors?

A No.

Q You didn't cast your vote at all?

A That's right. You are only referring to the directors and not other propositions?

Q You did give your proxy in those years?

A I beg your pardon?

Q You did give your proxy in those years?

A Only against the requirement of voting for the merger.

Q But you did not give your proxy to a voting person or take any other action?

A That's right.

Q With respect to the election of directors or with respect to any other propositions to the Continental shareholders --

A That's right.

Q -- for the years 1970, 1971 and '72.

A To the best of my recollection, that's correct.

Q You are not sure?

A Well, I am 99 per cent sure. I don't recall on one proxy there might have been a sentence or something that I might have voted against something. All I know is specifically the only recollection of voting had to be against the merger.

Q Did you vote in the 1969 election when you were on the Continental board and were also a shareholder of Continental, did you cast your ballot in that election for directors of Continental?

A Was the meeting after July?

Q In April, April 15th.

A I am sure if it was in April I owned the stock and I voted for the election of directors.

Q Did you at any time during this period own Penn-Dixie stock or any other securities of Penn-Dixie?

A Yes. During the period of my employment and thereafter, I owned some Penn-Dixie shares.

Q When did you purchase them?

A In the nine months of my -- in the early part of my employment.

Q How many shares did you purchase?

A I am not positive but I think somewhere in the

neighborhood of 2,000 shares.

Q 2,000 shares, and do you recall what you paid for those shares at the time?

A Too much.

Q Do you recall the amount you paid for those shares?

A No, I don't recall at this time. All I can tell you is, to indicate the amount, I took a loss like of $30,000 on those shares.

Q But you don't recall what you paid for the shares at the time?

A Somewhere in the 30's. Somewhere in the 30's.

Q Was that also in a private transaction?

A No.

Q Or was that on the open market?

A That was on the open market. In the open market.

Q And you don't recall when in that eight or nine-month tenure you purchased this stock?

A I would say in the first three or four months.

Q Do you have records that would indicate that?

A Yes, that I could find very easily.

Q That would show both the Continental and

Penn-Dixie stock?

A Yes, I could show you the advises on the Penn-Dixie shares.

Q Would you find that?

A Yes.

Q When did you sell the Penn-Dixie shares? Can you tell us?

A After the merger.

Q Can you give us dates and amounts?

A I can show you papers on every transaction on Penn-Dixie.

Q When was the last sale of Penn-Dixie that you made?

A Probably I would say half a year, six months after the merger.

MR. CHERNO: That's embraced in my prior request.

MR. ZIVYAK: Yes.

MR. CHERNO: This is a good time to break.

(Whereupon at 12:30 p.m. a recess was taken for the purposes of luncheon.)

AFTERNOON SESSION

JOHN SCHLICK, resumed the stand and testified further as follows:

EXAMINATION CONTINUED BY

MR. CHERNO:

Q Mr. Schlick, when you were with Penn-Dixie and Continental, did you ever recommend a merger of Continental and Hausman Steel?

A I recommended as spelled out in that memorandum of an acquisition of Hausman by Continental, Hausman Fabricating Division.

Q Did you ever have any discussions with Mr. Castle or anyone else at Penn-Dixie about your gambling activities?

A About what?

Q About your gambling activities.

A About my gambling activities?

(Witness shakes head from side to side.)

In fact, I don't even recall at that time that I gambled.

Q Did you ever have any discussion with

Mr. Castle?

A Never.

Q Or with anyone at Penn-Dixie about that?

A Never.

Q Is it your testimony that during the time you were with Penn-Dixie and Continental you were never to the race track during that period?

A No.

MR. ZIVYAK: Hold on a second.

MR. CHERNO: I thought he said he didn't gamble during that period.

MR. ZIVYAK: It seems to me I am entitled to some kind of connection between this line of questioning and this case. I certainly don't want to make an objection at this time until we can see where you are going.

MR. CHERNO: Well, let me ask my questions, and you will.

MR. ZIVYAK: There is an objection and a direction. I don't think I want him to answer.

MR. CHERNO: Your affidavits for the purposes of a class action motion, Mr. Schlick, states that you are submitting your background for the review of this Court and it states

certain of your --

THE WITNESS: Yes.

MR. CIERNO: -- your accomplishments, what you are proud of and what you are not so proud of. I think this area certainly goes within that background which you have submitted for the Court's review.

MR. ZIVYAK: I don't.

MR. CIERNO: Do you think his degree in 1937 from New York University is relevant but his activities in 1969 when he was with Penn-Dixie are not relevant; is that it?

MR. ZIVYAK: With respect to the period he was with Penn-Dixie, go ahead and ask any questions you want.

Q All right. Can you recall how many times during the ine-month period that you were with Penn-Dixie you attended the race track?

A Including the harness races?

Q Yes, that's the race track also.

MR. ZIVYAK: Once at night and once during the day?

Q You can break it up if you want.

A I would say I would, in the nine months, to the

to the thoroughbred racing not more than two or three times and to the harness racing, not more than four or five times.

Q Were any of those times that you attended the regular race track as you put it --

A Thoroughbred.

MR. ZIVYAK: Thoroughbred.

Q Thoroughbred race track.

A Yes.

Q I am sorry. -- during regular business days?

A I would imagine that two or three times that I would have attended the flat races would have been afternoons of business days.

Q Did you ever have a discussion with Mr. Castle about this?

A Not a word. Not a word.

Q How many times during the period that you were with Penn-Dixie did you go to Las Vegas, Mr. Schlick, if you recall?

A Once or twice.

Q Was that also during regular business days, Mr. Schlick?

A No. It would have probably been a weekend

related to a business trip to the West Coast where I might have spent a night or a weekend in Las Vegas.

Q Did you go to Las Vegas often, Mr. Schlick?

A I haven't been there now for three years.

Q But once or twice during that nine-month period?

A Yes.

Q How did you get there, Mr. Schlick?

A Never got to Las Vegas on the company jet.

Q How did you get there?

A It would have been commercial travel.

Q Did you ever discuss --

A Now, wait. I got to take this back once. And again I don't think it was, because we were in Denver and I went on to California with respect to a cement company out there. That trip going out was on the company jet, but I am almost positive I came back commercial and maybe -- maybe that was one of the times that I stopped at Las Vegas, but I never recall the company jet taking me to Las Vegas.

Q Did you ever have any discussion with Mr. Castle or anyone else at Penn-Dixie about your going to Las Vegas?

A Not that I know of.

Q You don't recall any such discussion?

A I might just in casual conversation have referred to the fact that I stopped in Las Vegas over the weekend or something like that, but no specific conversation that I can recall.

Q He didn't initiate the subject with you --

A No, sir.

Q -- at any time that you can recall?

A Never.

Q Do you have any credit at any Las Vegas hotels?

A Yes, I had a credit for many years at the Desert Inn.

Q That's the only one?

A And I believe another one but the credits were like 2,000 at the Desert Inn and 1,500 at another.

Q The Dunes?

MR. ZIVYAK: What's a credit Inn?

Off the record.

(Discussion off the record.)

THE WITNESS: The other, I even forget the name it's been so long since I have been there, but the maximum credit up until that time

was, as I say, like 2,000 at the Desert Inn and 1,500 at this one other hotel.

Q Did you ever meet with any bookmakers at Penn-Dixie's office?

MR. ZIVYAK: Objection and I direct the witness not to answer it. Enough already.

A I can answer it. The answer is no.

Q Did you ever have any conversations from Penn-Dixie's office with bookmakers?

MR. ZIVYAK: This line of questioning is irrelevant and I direct him not to answer.

MR. CHERNO: You mean his background is not important or you only want to submit portions of his background and not the rest? Is that your position, that you don't want to tell the Court about this?

MR. ZIVYAK: My position is that this line of questioning has nothing whatsoever to do with this case, with any aspect of this case.

Q Did you ever fly with your wife on the company plane, Mr. Schlick?

A One time when I was in Florida and the plane was coming to Florida by reason of taking Mr. Castle to the Palm Beach Club, my wife and I flew home from Florida

on the company plane.

Q You mentioned a Denver trip a few minutes ago.

A Yes.

Q Did you ever fly to Denver --

A No.

Q -- with your wife in the company plane?

A No.

Q I hope you didn't mistake the girl that Castle brought there that was going --

A Not unless she was listed on the plane as Mrs. Schlick. No.

Q In January 1969, you are sure you did not make any flights with your wife on the company plane, Mr. Schlick?

A To the best of my knowledge, no. I can only recall one trip.

Q Was your wife with you on that trip to Las Vegas that you mentioned?

A I do not believe so. You know, when you say this, I am trying to recollect. I know there was a trip to Denver and on to California on business and the reason I am second-guessing myself is because we did have a daughter living in California -- but -- yes.

Yes. My wife went on the plane with me on that business trip but not to Las Vegas because we did not use the company plane to go to Las Vegas.

Q What was your wife's business on that trip?

A I beg your pardon?

Q What was your wife's business on that trip?

A She had no business except to visit her daughter and the plane was empty.

Q Did you recommend and implement the purchase of stock whereby Penn-Dixie increased its stock ownership in Continental from about 38 per cent to over 50 per cent?

A No.

Q I show you a letter to Mr. Carlton Holstrom of the Bank of the Commonwealth in Detroit and Mr. Theodore Platz of the Franklin National Bank dated January 22, 1969, purportedly signed by John P. Schlick, and ask you if you wrote that letter.

A I know we were having trouble with the bank. Yes. I wrote the letter.

MR. CHERNO: You wrote that letter.

Can I have that marked, please, Mr.

Reporter.

(Letter to Mr. Carlton Holstrom of the Bank of the Commonwealth and Mr. Theodore Platz of the Franklin National Bank dated January 22, 1969, was marked as Defendants' Exhibit 6 for identification, as of this date.)

Q Do you have that letter?

A Yes.

Q Is it fair to say the second paragraph is a request to the banks to permit Penn-Dixie tc acquire up to 51 per cent of the outstanding stock of Continental Steel?

A Yes.

Q And did the banks reply to that request to the best of your recollection?

A To the best of my recollection, they gave the permission, to the best of my recollection.

Q In that letter there is a line in the first paragraph which says "In our negotiations to finalize the term loan, this was discussed many times and it was my understanding that the restrictions in the term loan agreement would not restrict our acquisition of additional shares of Continental Steel."

Can you tell us what those negotiations

and discussions were?

A Yes.

Q That you had with the banks.

A Yes. They were borrowing money and Franklin with the bank in Detroit were involved in it and they were drawing up a substantial loan document and this restriction that we are referring to here, even though it did not refer specifically to Continental Steel shares, nevertheless had the effect of restricting the use of the funds for Continental Steel shares.

Q And that --

A -- wasn't the intention.

Q The possible purchase of additional shares of Continental Steel was discussed between you and the banks in these negotiations many times. That's what this paragraph states. Is that right?

A Obviously, yes.

Q What did you say in those discussions and negotiations?

A I said we were looking to acquire a majority in Continental Steel.

Q Further down in that paragraph, the line, "Which to my chagrine it appears that this specific exception somehow or other fell through the contract."

A Right.

Q Can you tell us what that means?

A Yes. If you don't understand it, I will. It means that while it had been agreed to in conversations, in the drafting and putting the document together, that exception to permit the purchase of Continental shares was inadvertently omitted, fell through the contract.

Q The letter further states near the bottom of the first page, "In making any purchase of a large block we will look to appraisals which we will secure from at least two stock exchange firms."

Did you ever recall getting any such appraisals, Mr. Schlick?

A I do not believe appraisals were ever gotten, except for Mr. Castle who may have spoke with Mr. Abel, who at that time I think was H. Hentz -- they changed companies about three times, and I believe it was with H. Hentz about that time.

Q And do you recall whether the banks agreed to this letter?

A I believe so. I believe the final document permitted the acquisition of additional shares.

Q I show you two letters, both dated

January 28, 1969, one from the Bank of the Commonwealth to you and the other from the Franklin National Bank to you, and ask if you recall receiving these letters.

A They are both the same. Oh, no, they are different letters. Both the same date. Oh, I see. They are two different banks.

Yes, I believe I recall receiving those letters. In other words, they put a restriction on the acquisition.

MR. CIERNO: I would like to have those marked.

(Letter dated January 28, 1969 from the Franklin National Bank, was marked as Defendants' Exhibit 7 for identification, as of this date.)

(Letter dated January 28, 1969, from the Bank of the Commonwealth, was marked as Defendants' Exhibit 8 for identification, as of this date.)

Q After these letters were received, Mr. Schlick, did you proceed to implement these purchases of the additional stock, Continental stock, by Penn-Dixie?

A Only that -- I never initiated or recommended any specific purchase of the stock, but implemented the

request by Mr. Castle to purchase a specific number of shares at a specific price through Stanley Abel's firm and one other brokerage firm.

Q And you implemented those purchases?

A That's right.

Q Did you implement purchases of Continental stock in excess of the waivers that the bank had permitted?

A Not to the best of my knowledge.

Q While you were with Penn-Dixie, did you recommend the acquisition by Penn-Dixie of a company called The Life Insurance Company of America?

A I investigated that acquisition which had been brought to Mr. Castle, and I recommended the acquisition after my evaluation, which as I recall went on even for a short period after I left the company.

Q In fact, that's what you got your consulting fees about, wasn't it?

A That's it exactly. Exactly.

Q Do you recall how that one turned out, Mr. Schlick?

A How it turned out? I got a feeling from what I heard it turned out very badly because the management recommends regarding the operation of it, both from the

actuaries we used in Chicago to evalute the values of the unexpired premiums, et cetera, I have a -- I don't have any specific knowledge, although I seem to have heard someplace else that it did not turn out.

Q In fact, did Penn-Dixie end up taking an extraordinary loss of several hundred thousand dollars on that acquisition?

A I don't recall.

Q You don't recall.

Is it fair to say that after the merger of U.S. Plywood and Champion Paper, you were not offered a continuing executive position with the new company?

A Far to the contra... I helped engineer the merger of the two companies. At the time of the merger I was given a very excellent contract. I was made executive vice president of the combined corporation, on the board of directors, on the executive committee, on the finance committee, on the pension committee.

Q And were you asked to stay on after that merger?

A Absolutely.

Q What occasioned your leaving?

A I left a year and a half later after it became apparent that the business policies of the Champion side through Mr. Kar. Bendetsen were at variance with my own and a year and a half later, for these personal reasons, I left the company and they have honored my contract since that time.

Q Did Mr. Bendetsen ask you to leave, Mr. Schlick?

A No. In other words -- well, I shouldn't say that. It became a mutual agreement that I would resign because he felt that he wanted to do things his own way, which I was in opposition to in certain respects, and we came to a parting of the ways on an amicable basis.

Q But the answer to my question, then, essentially is yes; is that correct?

A Well, when you say asked me to leave, I didn't have to leave. Well, you can say, all right, if you want to say -- he indicated it would be better if I resigned. All right?

MR. EINSTEIN: I want to make a call.

MR. CHERNO: Let's take two minutes.

(Whereupon a brief recess was taken.)

Q I notice that in your presentation of

your record for review at the Court, there is nothing about your post-Penn-Dixie record, is there?

A Well, there could be. Again, I prepared it in conjunction with the attorneys and --

Q Is one of your post-Penn-Dixie ventures the Emerald Green venture?

A Leisure Time Developers.

Q What was that venture? Tell us about that.

A First of all I was recommended by Mr. Stanley Abel, who was Mr. Castle's broker, to go up to Emerald Green in Sullivan County, corporate name, Leisure Time Developers, to see if I could help straighten out a mess that a number of Mr. Abel's customers have become involved in through his efforts.

I became president of the Leisure Time Developers.

Q When was that? Can you fix that in time?

A In, oh, I guess, say January, February 1970. And it was a mess and with the investors we kept taking steps, most of which were the injection of additional financing, hiring market personnel, et cetera, and it was moving along, but with a chronic cash shortage as most land developments get involved in, in fact it was short of cash much before I got there.

Q What was their business, by the way?

A Beg pardon?

Q What was their business?

A The development and sale of vacation home sites.

Q Continue.

A In Sullivan County.

Q Fine. Continue with your --

A So, it got to the point where this was becoming a very fragile thing to keep alive, because of the lack of working capital, that through Mr. Fixman's efforts, through Mr. Fixman's efforts, who was an investor in Leisure Time, we merged the company with Datatron Processing in New York, which was a magazine subscription fulfillment service, computer oriented, who at that time had a declining business, but had cash they wished to invest.

And we merged at that time, which I got to say was in October --

MR. ZIVYAK: September 7, 1972.

A September 7, 1972.

Q And you were president of Leisure Time during this period?

A I was president of Leisure Time, and Mr. Ross, Irwin Ross, who was the chairman of Datatron, became the

chairman of Leisure Time and the chief executive officer and chief operating officer.

Q And what was your position then?

A My position still as president was an administrative office.

Q And were you a director of this merged company?

MR. ZIVYAK: Well,may I interject at a moment, Mr. Cherno? By awesome coincidence, I was the attorney in that acquisition, as you may know. It was not a merger. It was an acquisition. They remained separate entities.

MR. CHERNO: So Mr. Schlick continued as president of the Leisure Time group.

MR. ZIVYAK: Stayed on the board of Leisure Time and at the time of the merger, he went on the board of Datatron Processing.

THE WITNESS: And as I say, Mr. Ross was the chief executive officer and operating officer of Leisure Time Developers, and it developed that Datatron -- and I hate to bring this up, it will only confuse people, changed its name to Emerald Green Corporation.

Q Was that the name of this development?

A No.

MR. ZIVYAK: Of the development, yes.

A No, not the corporation. The name of the development is Emerald Green.

Q That's what I was suggesting.

A The trade name, if you want to call it that. The name of that corporation developed the land and sold the parcels was Leisure Time Developers. Datatron was the acquiring corporation in the computer magazine business. It subsequently changed its name to Emerald Green Corporation. That's why I say it gets confusing. Emerald Green Corporation put money into Leisure Time Developers at the same time its business was deteriorating because the magazine fulfillment business was deteriorating by reason of magazines going out of business, and Mr. Ross moved to Sullivan County and spent full time, basically full time on Leisure Time Developers, and in December -- October, October '73, by reason of the gasoline shortage and the problems of long lines, for the next six months the business of Leisure Time Developers deteriorated further.

Additional financing was not available. And Leisure Time Developers at that time ceased its selling activities, and Emerald Green Corporation,

parentheses (Datatron) also got to the point at that time where it filed Chapter XI in May 1974 -- four. Four.

MR. ZIVYAK: March.

MR. EINSTEIN: Mr. Zivyak, I would really appreciate it if you didn't keep feeding the witness dates. Let's have his own recollection.

THE WITNESS: No, it was May '74. And subsequently to that, this date, I believe somewhere in '75, early '75, I believe by reason of the inability of Leisure Time Developers, the subsidiary, to obtain additional financing, it also filed a petition.

MR. ZIVYAK: If it's all right with you, you just got an erroneous fact, if you want the record corrected.

MR. CHERNO: Off the record.

(Discussion off the record.)

MR. CHERNO; On the record.

MR. ZIVYAK: Leisure Time Developers did not file a Chapter XI petition. It filed a voluntary petition in bankruptcy.

Q Were you the president of Leisure Time

Developers throughout this entire period, Mr. Schlick?

A Yes.

MR. ZIVYAK: What period?

THE WITNESS: That we have discussed.

MR. CIERNO: Since early 1970 to the present day.

THE WITNESS: Leisure Time Developers.

Q To the best of your knowledge were you the president of this company?

A Yes. I am the one that signed the petition.

Q And you were a director of the company throughout this period?

A Of Leisure Time Developers, yes.

Q Is this a publicly-owned coproration?

A It was a wholly-owned subsidiary of Emerald Green Corporation, paren, (Datatron.)

Q Before the acquisition was it a publicly-held company?

A No, it was a privately-held company.

Q Did you have an investment in that company?

A Yes.

Q What was the extent of your investment?

A $30,000, roughly.

Q And did you receive on that acquisition, did you receive Datatron stock?

A Received Datatron stock in exchange for the Leisure Time stock.

Q And Datatron, is that a publicly-held company?

A Yes.

Q And do you still hold that Datatron stock?

A Yes, I have nothing else to do with it.

Q Was this your principal employment occupation during the period since you left Penn-Dixie?

A Yes.

Q Did you ever attempt to interest anyone in Penn-Dixie in investing in either Leisure Time or Datatron or Emerald Green?

A No way.

Q Did you ever have any discussions with anyone at Penn-Dixie about any of these companies that we have just mentioned?

A To the best of my knowledge, no.

Q Did you have any other employment activity during this period?

A I am just trying to think out loud. During the

period I was with Leisure Time?

Q During the period from 1970 to date.

A From January 1970 or February 1970 --

Q 1970 to date.

A To date? Well, so you are going beyond Leisure Time Developers?

Q Well, Leisure Time sort of goes to date, but let's go to date. Fill me in.

A After that I began to get involved in a small corporation that was involved in a process to recycle solid waste and went with them after the Leisure Time situation as executive vice president.

Q What is the name of that company?

A Environment Resources Corporation.

Q Is that a public company?

A No, private.

Q When did you go with this company?

A Somewhere in the middle of 1974.

Q And what is your position with that company?

A Executive vice president.

Q Have you been named a defendant in any lawsuits of any nature?

A Yes.

Q Arising out of your business activities?

A I believe there has been a suit which I don't know what's happened to it and I hope you will ask Mr. Zivyak to tell me the status of it, brought by the Emerald Green Homeowners -- I shouldn't say that. Brought by certain Emerald Green property owners against Leisure Time Developers and the officers of Leisure Time Developers for alleged acts of not properly serving the requirements for development of the recreational facilities, et cetera, at Leisure Time.

Q Were any fraud claims made in that suit?

A Knowing the lawyer involved, I am sure he put everything from criminal to fraud. I don't know what's in it except --

Q But your recollection is that there are fraud claims --

A Yes.

Q -- made against you?

A Yes.

MR. ZIVYAK: No, let's just say the word is used in the complaint. I don't think you should ask Mr. Schlick to characterize it.

Q Do you have any further knowledge of the claims that have been made against you?

A I read the damned thing once. It's ridiculous, and as I say, Mr. Berman and Mr. Zivyak have handled it and I don't know what's in it.

Q Have you been deposed in that lawsuit?

A I beg your pardon?

Q Has your deposition been taken in that lawsuit?

A No, sir.

Q Can you tell us what Court that lawsuit is pending in?

MR. ZIVYAK: Supreme Court Sullivan County.

MR. CHERNO: Will you provide us with a copy of the pleadings in that lawsuit?

MR. ZIVYAK: There are so many pleadings that I hope I can give you all of them. It's something other than a lawsuit that disguises itself as a lawsuit.

MR. CHERNO: If you will show us your litigation binder, we would be glad to look at it.

MR. EINSTEIN: Off the record.

(Discussion of the record.)

Q Have you ever been named as a defendant

in any other actions?

A As a defendant? To the best of my knowledge, no. Can I inquire of my attorney whether I have been or not? That he has knowledge? I don't have any knowledge.

MR. ZIVYAK: You must understand that the corporation was named in lawsuits and Mr. Schlick participated in the defense of those actions and possibly he is trying to recall whether or not he was ever personally named. I guess that's what his thinking is now.

MR. CHERNO: Well, again, I will take a response from Mr. Schlick or Mr. Zivyak on this question.

MR. ZIVYAK: To the best of the recollection of the litigation that my firm handled, the one Mr. Schlick testified to is the only one I am aware of.

THE WITNESS: Again, I might also say -- excuse me -- you know, there were lots of claims, creditors, of Emerald Green against Leisure Time Developers. I can't tell whether or not I was named on it or not, but to the best of my knowledge, no.

Q Well, if you or your counsel can make a

review of your files and reply to us with whatever information you have.

A Okay.

Q Insofar as these claims, any claims that may have been made against you, I would request that of you.

A All right. I have given you my complete knowledge, other than this one lawsuit I know of no other. Excuse me, Jeff. You are talking about lawsuits that may have been disposed of?

Q I am talking about all lawsuits.

A The one by the Yankee Lake?

MR. ZIVYAK: I don't think you were named individually.

THE WITNESS: I don't know.

MR. ZIVYAK: He was not named as a party defendant in that.

Q Has Emerald Green or Datatron or Leisure Time been the subject of any investigations by the SEC or by the New York State Attorney General?

A To the best of my knowledge, no.

Q Are there other stockholder suits brought by Emerald Green or Datatron or Leisure Time stockholders that you are aware of?

MR. ZIVYAK: You are using the word "other" incorrectly.

MR. CHERNO: I am sorry. Strike the word "other" from that question. I will rephrase the question.

Q Are there stockholder suits by, brought by stockholders of Datatron or Leisure Time or Emerald Green that you are aware of even though you may not be a defendant in those actions?

MR. CHERNO: Mr. Zivyak, you can respond to that one if you want.

MR. ZIVYAK: May I say this, we are not defending any..

MR. CHERNO: Are you aware of any?

MR. ZIVYAK: No, and to finish that, I don't know of anybody else who would be, you know, so --

THE WITNESS: Can I help?

MR. ZIVYAK: Yes, please.

Q Yes. The question is addressed to you.

A For example, let's take first of all Datatron. To the best of my knowledge, I know of no --

MR. ZIVYAK: When you are talking about stockholders, are you talking about 10-B5 type

of litigation, mismanagement, derivative type of claims?

MR. CHERNO: Yes.

MR. ZIVYAK: The answer is, to my knowledge, no.

Q You were going to help, Mr. Schlick.

A Well, it really got back to your other things. For example, up at Leisure Time, there were lawsuits started for the collection of debt which because the company had no money with which to pay it, some people got judgments against the defunct Leisure Time Developers. Again, I was not named or involved, but you asked about lawsuits.

Q What were those about?

A Commercial trade situations.

MR. ZIVYAK: They were goods sold and delivered type of cases.

Q When you first heard of the proposed merger of Continental Steel and Penn-Dixie, did you attempt to seek injunctive relief against that merger?

A I discussed the situation which I considered to be a rip-off of the Continental shareholders, and I sought advice from Berman & Zivyak, who advised the type of action which was started. I did not seek injunctive

relief.

Q Why didn't you seek injunctive relief?

A Advice of counsel.

MR. ZIVYAK: I will object.

MR. CHERNO: If that's the answer, I have not asked for conversations between you and your counsel.

THE WITNESS: Yes.

Q When you first heard of this merger, did you sell your Continental shares?

A No.

Q Why didn't you sell your Continental shares?

A Quite frankly, because the stock was much lower than I felt was its value and hopefully something would happen that the merger wouldn't go through.

Q When you first heard of this merger, did you contact the SEC or any other regulatory body?

MR. ZIVYAK: Objection, and I direct him not to answer.

MR. CHERNO: That's directly relevant under the Second Circuit's opinion and under the statement of any possible damage that you or any other plaintiff may have suffered in this

lawsuit.

MR. ZIVYAK: I think that's a series of questions in which you have attempted to impute upon Mr. Schlick some duty which I don't believe he has.

MR. CHERNO: That's an ultimate question. Right now I am trying to get the facts.

MR. ZIVYAK: I don't believe the question falls within the framework of the pleadings and I am objecting and directing him not to answer.

MR. CHERNO: We will just have to have Mr. Schlick back.

Q Did you, when you first heard of this complaint, go to any other regulatory body besides the SEC about this merger?

MR. ZIVYAK: I think you better have the question read back.

Q Do you understand the question?

A I am a little confused. You said the word "complaint."

Q I am sorry. I will rephrase the question.

A Thank you.

Q When you first heard of this merger or

at any other time after hearing of the merger, did you contact any regulatory body with respect to the proposed merger?

MR. ZIVYAK: Objection, and I direct the witness not to answer.

Q Did you, after hearing of this merger, seek to generate any publicity in an effort to have the merger, in an effort to prevent the merger from being completed?

A No.

Q Why didn't you seek to generate such publicity, Mr. Schlick?

A Because in my opinion no publicity could avoid the voting of the Penn-Dixie shares the way they were going to be voted.

Q Did you attend the Continental Steel shareholders meeting?

A No.

Q And attempt to speak out against the merger?

A No.

Q Was it too much trouble for you to go to that meeting?

MR. ZIVYAK: Objection, and I direct

the witness not to answer.

Q Why didn't you attend the meeting?

MR. ZIVYAK: Objection and direct him not to answer.

MR. CHERNO: That's objectionable?

MR. ZIVYAK: Yes. It's objectionable and it's irrelevant.

Q Did you attempt to contact other Continental shareholders in an effort to mobilize opposition to this merger proposal?

A No.

Q Did Mr. Berman or Mr. Zivyak suggest to you the institution of this lawsuit?

MR. ZIVYAK: Objection, and I direct the witness not to answer.

MR. CHERNO: What's the objection, Mr. Zivyak? Do you think the genesis of this lawsuit is irrelevant to a class action?

MR. ZIVYAK: I think any conversation attorney to client and client to attorney is confidential. And also I might add that the line of inquiry is contrary to the holding of the Sanderson case in the Ninth Circuit, which I am sure will be followed in this Circuit.

MR. CHERNO: I am glad you are a Judge, Mr. Zivyak.

MR. RUSSO: It's the Tenth Circuit.

MR. ZIVYAK: Tenth Circuit.

MR. CHERNO: But you understand the import of my question and you still consider it irrelevant?

MR. ZIVYAK: And a ground which at least one Court of Appeals in this country held was not a proper ground for inquiry in pre-trial discovery.

Off the record.

(Discussion off the record.)

Q In the first conversation you had with respect to the institution of this lawsuit, was that initiated by you or by Mr. Berman or by Mr. Zivyak?

MR. ZIVYAK: Objection and I direct the witness not to answer.

MR. CHERNO: I have not asked him for the substance of any conversation.

MR. ZIVYAK: But I think the holding of the recent cases is sufficiently broad to cover that as well. No. On second thought I will withdraw the objection. I will let him answer it.

A I went to Berman & Zivyak and expressed my concern and asked their advice as to how to proceed to seek relief.

Q When did you go to Mr. Berman and Zivyak, or Mr.Zivyak?

A When I first received the news, either through a newspaper or a proxy, of the intention and the description of the merger.

Q Were you aware of the announcement in August of 1972 with respect to the proposed merger?

A Well, I read the Wall Street Journal every day, so I would assume if that's when it first appeared, that's when I would have seen it.

Q And did you take any action at that time?

A No. When you say take any action, against whom?

Q Did you take any action of any sort with respect to that announcement?

A Yes, I contacted Berman & Zivyak.

MR. ZIVYAK: Off the record.

(Discussion off the record.)

A Well, Berman & Zivyak, but Berman was my key contact. Now, whether or not it happened to be Berman before that, but as I recall --

MR. ZIVYAK: Was that August 1972, did

you say?

Q My question was when the first preliminary announcement was made in August '72.

A I contacted Mr. Berman.

MR. CHERNO: Come on. You are coaching the witness. If the witness doesn't recall, let him answer, but if the witness doesn't recall, let him answer to the best of his recollection.

A Whether it was when I first saw the announcement or when I got the proxy, somewhere in that period, I contacted Berman. I had met Berman even when he was down on Wall Street.

Q Do you have an agreement, Mr. Schlick, to pay your lawyers in this action?

MR. ZIVYAK: Objection and I direct the witness not to answer.

MR. CHERNO: I understand the objection.

MR. ZIVYAK: It's the square holding of the Sanderson case.

Q Do you have an agreement with your lawyers to pay any costs that may be incurred in this matter?

MR. ZIVYAK: Same objection, same direction, same reason.

Q Do you have a written retainer agreement with your lawyers?

MR. ZIVYAK: Same objection, same direction, same reason.

Q Did you pay the costs of printing your brief to the United States Supreme Court in opposition to a writ of certiorari?

MR. ZIVYAK: Same objection, same instruction, same reason.

Q Did you initially pay the costs of printing your brief to the Circuit Court of Appeals?

MR. ZIVYAK: Same objection, same direction, same reason.

Q Do you have an agreement with your attorneys to pay the costs of litigation in this litigation?

MR. ZIVYAK: Same objection, same direction, same reason.

Q Do you have an understanding with your lawyers that you will bear the expense of this case in the event there is no recovery in this case?

MR. ZIVYAK: Same objection, same direction, same reasons.

Q Is it your expectation that your attorneys

will bear these costs in this case?

MR. ZIVYAK: Same objection, same direction, same reason.

Q Do you have an understanding with your attorneys that you will personally bear the cost of notifying the class of shareholders in this action if there is a holding of a class designation here?

MR. ZIVYAK: Same objection, same direction, same reason.

Q Is it your intention to bear the costs of notifying the class in this matter?

MR. ZIVYAK: Same objection, same direction, same reason.

MR. CIERNO: And if I asked those questions with respect to all those other costs, you would similarly object; is that correct?

MR. ZIVYAK: I would, yes, if that will save you some time.

Q Have you personally expended any money whatsoever in the prosecution of this action to this day?

MR. ZIVYAK: Same objection, same direction, same reason.

Q Did you ever read the proposed amended complaint before it was filed and served on defendants?

A Yes.

MR. CIERNO: Let me mark this document, Continental Steel Notice of Special Meeting of Stockholders and Joint Proxy Statement dated March 29, 1973, as the next Defendants' exhibit.

(Document, Continental Steel Notice of Special Meeting of Stockholders and Joint Proxy Statement, dated March 29, 1973, was marked as Defendants' Exhibit 9 for identification, as of this date.)

Q Have you discussed the allegations of the complaint or the amended complaint with any other Continental shareholder or former Continental shareholder?

A Directly, no.

Q Well, how have you discussed it indirectly and with whom?

A I believe that my attorneys have discussed it with another shareholder.

Q Who would that be?

A I believe it is Mr. Weldon.

Q And did you suggest that they see Mr.

Weldon?

A No.

Q Do you know how your attorneys came to contact Mr. Weldon?

A I believe Mr. Weldon called the attorneys.

Q Have you had any discussions at all with Mr. Weldon in the last three years?

A Yes.

Q About Continental Steel or Penn-Dixie?

A Yes, in connection with the complaint, with the lawsuit.

Q That was my first question and you answered it no.

A Oh, no, no, no, no. Now you go back into the previous questioning and you asked me how I got certain information.

Q No, I just asked that about two minutes ago but let's go on.

A All right.

Q You have had discussions with Mr. Weldon?

A Yes.

Q Can you tell us when you had those discussions and what the substance of those discussions were?

A Well, in the past couple of years, not very lately.

Q Tell me what the substance of those discussions was.

A Well,as I recall, we discussed his interest in the complaint and he mentioned certain things about compensating balances which is where I believe I referred to having the conversation with Mr. Weldon.

Q In fact, did you join with Mr. Weldon in bringing a lawsuit relating to this matter?

A Did I join with him?

Q Yes, did you join with him?

A I don't know whether I joined with him or not.

Q You don't know whether you joined with him or not?

A No.

Q Fine.

Were you able to tell from the Continental Steel proxy statement which I can show you, if you wish, that Penn-Dixie had named a majority of the members of Continental's board of directors?

A That Penn-Dixie had named a majority? You mean at a stockholders meeting? I mean the directors are elected by the stockholders.

Q Your complaint at page 4 --

A Yes.

Q -- and here I mean the amended complaint, states as one of the allegations that Penn-Dixie had named the majority of the directors on Continental's board and had caused to be designated a majority of such directors.

A Yes.

Q My question to you was, were you able to tell that or learn that from this proxy statement.

MR. ZIVYAK: I am sorry. I really don't understand the question.

THE WITNESS: Well, I understand what he is trying to say.

A And the answer is no, I didn't learn it from the proxy statement. I knew it from the actions of who was designated directors.

Q That's fine.

A And they could only be designated directors at the instigation of Jerome Castle. I mean, that's obvious.

Q Were you able to tell from this proxy statement that Mr. Castle was receiving a salary from Continental Steel of $50,000 a year?

A Whether I knew it from the statement or not, I knew it.

Q Was that contained in the proxy statement, to your knowledge?

A I assume it was.

Q Were you able to determine from the proxy statement what Continental's earnings and dividends were for the period from 1968 through 1972?

A 1968 through 1972?

Q Through 1972.

A I believe there was reference in there to the earnings of Continental Steel.

Q Were you able to determine from the proxy statement how much of Penn-Dixie income was attributable to Continental's operations?

A Yes, pretty much so, in round numbers, because of the percentage of ownership.

Q Were you able from the proxy statement to make the computation which is set forth in paragraph 15 of your complaint as follows: "The income attributable to the ownership of Continental amounted to approximately $1,007,000 in 1970, $1,226,153 in 1971 and $1,753,000 in 1972, that Continental income accounted for approximately 50 cents of the alleged 80 cents

earned by Penn-Dixie in 1972," were you able to make that computation from the figures contained in the proxy statement?

MR. ZIVYAK: I want to ask you a question about that question, Mr. Cherno. I am quite serious about it. I am not trying to obfuscate the issue. The question you are asking, is it --

MR. CHERNO: Do you have an objection?

MR. ZIVYAK: I want a clarification.

Q Do you understand the question?

MR. ZIVYAK: I don't understand it and clients of mine don't answer questions I don't understand.

I will rephrase it.

Were you able to make the computation which I just quoted to you from your complaint from the information contained in this proxy statement?

A I believe I was. I don't know whether I may have referred to other information such as 10-K reports.

Q Were you able to determine from the proxy statement what Penn-Dixie's gross income would have been without including the operations of Continental?

A I would have to refresh my memory by looking

back at the proxy statement, but I believe it would have been possible there; if not, it would have been possible through the 10-K report.

Q You have some computations at the bottom of page 18 and the top of page 19 of your amended complaint. Were you --

MR. ZIVYAK: I am sorry. I am in trouble. Bottom of 18, right?

MR. CIERNO: Right. I hope your numbering is the same as mine. Just the allegations in that small Roman vi; small Roman six.

Q Were you able, Mr. Schlick, to make those computations based upon the material contained in the proxy statement?

A Yes, I believe I was.

Q And the allegations in the next sub-paragraph, Roman vii; and the following paragraph, viii; were you able to make those computations based upon the material contained in the proxy statement?

A Yes, I believe I was, through use of the numbers, and I may have used additional information such as the 10-K reports.

Q Why do you say at page 14 of the amended

complaint, what is the basis -- withdraw that and I will start a new question.

What is the basis for your statement at page 14 of the amended complaint?

A Where on page 14?

Q That -- paragraph 21, that provision should have been made in the Penn-Dixie financial statements for the amortization.

MR. ZIVYAK: I don't see that.

A I can't find that.

Q All right. Sub-paragraph A states --

A It says no provision.

Q My question is what is the basis for your contention that provision should have been made in the Penn-Dixie financial statements for the amortization of the excess of cost over assets acquired attributable to the purchase of Continental stock.

A In my estimation, because of the value for which they acquired the remaining shares, it was obvious that the 21 million excess cost was an inflated value which the Penn-Dixie directors said was the true value.

MR. CIERNO: I would like to break for five minutes now.

(Whereupon a brief recess was taken.)

MR. CHERNO: That's all I have at this time, subject obviously to the many objections and the rulings on those objections.

MR. EINSTEIN: I would like five minutes with Mr. Cherno.

(Whereupon a brief recess was taken.)

EXAMINATION BY

MR. EINSTEIN:

Q Mr. Schlick, will you tell us your educational background, please.

A Grammar school, high school, graduate New York University, 1937, bachelor of science degree. Do you want more than that? C.P.A. New York State.

Q When did you become a C.P.A.?

A I received my certificate in 1939.

Q And what was your employment immediately prior to Penn-Dixie?

A Immediately prior to Penn-Dixie?

Q Yes.

A For 19 years I was employed by U.S. Plywood and then U.S. Plywood Champion Papers.

Q What was the last position you held at

U.S. Plywood Champion?

A The very last position was executive vice president of the corporation and in charge of the total U.S. Plywood operations.

Q And prior to the merger of Plywood and Champion, what position did you hold?

A I was executive vice president of U.S. Plywood Corporation, finance and administration.

Q And what was your salary in that position?

A Which one?

Q With Plywood before the merger.

A Oh, gosh. I would say, including bonuses and all, somewhere in the neighborhood of 75,000 to $90,000.

Q What was your salary after the merger?

A Including deferred compensation, et cetera, it was in excess of 120,000. It could have been like 130, 140, part of which was represented by restricted shares which are still being paid out to me, but which were allocated each year as a participation.

Q And what was your salary at Penn-Dixie?

A I believe 65,000.

Q And did you receive a salary at Emerald

Green?

A Yes, I received a salary of 36,000 prior to the merger, plus, plus deferred compensation, and I believe it was 36,000 after the merger with Datatron.

Q What is your current salary at Environmental Resources?

A $2,000 a month prior, which is prior to the operation of the project, which is being planned, and with escalation and a share of the equity after it's being in operation.

Q Do you know as a fact whether any expenses of Penn-Dixie, whether by way of overhead or otherwise, were allocated to Continental at any time prior to the merger?

MR. ZIVYAK: I think that has been asked and answered.

MR. EINSTEIN: No, it hasn't.

A Of my own specific knowledge, I do not know of it, other than as I indicated before through conversations with Dr. Montrone.

Q Dr. Montrone told you that expenses were being allocated; is that your testimony?

A He implied they were being allocated.

Q You say he implied. Did he say it or

didn't he say it?

A I don't recall the exact conversation but it was sufficient enough for me to come to the conclusion that they were being allocated.

Q What information did he impart to you that led you to this conclusion?

A I can't recall specifically the information, because the discussions were more or less general, pertaining to the activities that were being carried on.

Q Now, you stated before in response to a question by Mr. Cherno that in your opinion steel companies should pay dividends of approximately 50 per cent of earnings over a period of time.

A Over a period of time on the average.

Q Are you familiar with any other steel companies which pay such dividends?

A Well, right at the present time --

Q Go back to 1969 or '70, which is the period of time that we are talking about. How about during that period of time?

A No, the major steel companies did not pay those kind of dividends because they were constantly in a state of expansion, which Continental Steel at the time was not.

Q Is it acceptable procedure for a company which wants funds to expand to reduce its dividends to obtain cash for expansion purposes?

MR. ZIVYAK: Objection. Are we going to qualify Mr. Schlick as an expert?

MR. EINSTEIN: He is on the board of a company. He has already give us his opinion as to what the dividend should be. I think he can answer.

MR. ZIVYAK: I don't think he is qualified to answer.

MR. EINSTEIN: Are you directing him not to answer?

MR. ZIVYAK: Yes.

Q Tell us, what were your duties at Penn-Dixie?

A Subject to Mr. Castle's veto power, I will have to put it that way, I was responsible for the total financial and administration of the company plus involvement in overseeing certain of the operations.

Q . Did you have responsibility for relationships with Penn-Dixie, between Penn-Dixie and its lenders, banks?

A Yes.

Q As part of that responsibility, were you called upon from time to time to issue certificates to the lenders as to Penn-Dixie's compliance with its loan agreements?

MR. ZIVYAK: You mean did he personally issue the certificate?

MR. EINSTEIN: Yes.

A I am -- I do not recall other than the supplying of interim statements any certificates of compliance which I believe, except with respect to the trustee on the board or debentures that were outstanding, there were annual requirements.

Q All right. Do you recall at the time that you were executive vice president of Penn-Dixie whether Penn-Dixie was required under its loan agreements to issue certificates to the lenders stating that Penn-Dixie was in compliance with the various terms and provisions of the agreement?

A I have got to answer that affirmatively because I can't conceive of a -- when you say loan agreements, I assume you are talking about bank loan agreements.

Q Yes, sir.

A As well as the debenture requirement.

Q Let me restrict my question --

A All right.

Q -- to bank loan agreements. Penn-Dixie had loans from banks, right?

A Right.

Q And those loans were pursuant to rather complex agreements, as a matter of fact, were they not?

A I do not believe if my memory is correct that the loans prior to the loan agreement with the Commonwealth and Detroit --

MR. ZIVYAK: Franklin.

A I am sorry. Commonwealth, Detroit, and Franklin, that there were complex loan agreements.

Q All right. There were loan agreements with the Commonwealth and Franklin.

A Yes.

Q And they contained various provisions and covenants between Penn-Dixie and the banks; do you recall that?

A That is true.

Q And do you recall also that the loan agreements contained provisions whereby Penn-Dixie was required to issue a certificate periodically saying that we are in compliance?

A That's right.

Q Did you ever issue or sign any such certificates?

A First of all, while there were requirements for certificates as you have indicated, I don't know if any such certificates were required between the time the loan was consummated and the time I left, other than perhaps the -- giving them quarterly statements, and probably required annual certifications as to the compliance, which I probably was not there for. I mean, I am --

Q Was it part of your duties as executive vice president of Penn-Dixie to make sure that any action taken by Penn-Dixie complied with the loan agreements?

A Yes, it was my duty to be knowledgeable about the requirements and to see that they were within the framework of the loan agreement.

Q Now, Mr. Schlick, have you ever been convicted of any crime?

A Traffic offense?

Q Exclude traffic offenses.

MR. ZIVYAK: Exclusive of?

MR. EINSTEIN: Yes, of course.

A To the best of my knowledge, no.

Q To the best of your knowledge, have you ever been indicted or charged with any crime?

A To the best of my knowledge, never.

Q Aside from the litigations you mentioned when Mr. Cherno was questioning you, have you ever been sued in any Civil litigation, whether pending or terminated?

A Not to the best of my knowledge, no.

Q Have you ever been the subject of any investigation by the Securities & Exchange Commission or any other Federal or State regulatory agency?

A [illegible] examining my return.

Q I will exclude that.

A Excluding the IRS, the answer is no.

Q Have you ever been a plaintiff in any other lawsuit other than this one and the other two suits?

A Personally or corporate?

Q Personally.

A Personally, yes, one that -- well, I don't know, no, it never came a lawsuit because George Perlstein handled it. It was a settlement of a cattle deal with an individual, which George Perlstein handled, but I can't

recall ever being a plaintiff. I guess I am now a plaintiff in an automobile accident case that happened almost two years ago where I got a couple of cracked ribs.

Q Now, you testified that you owned some Penn-Dixie stock at various times.

A Yes.

Q Did you ever vote any of that stock?

A I am positive I voted it while I was with the corporation. I would imagine I did not vote it after I left.

Q While you were with the corporation, did you vote it for management?

A Oh, of course.

Q And you don't recall whether you voted it, voted any Penn-Dixie stock after you left?

A My honest feeling is I did not vote it.

Q Now, you mentioned that when you were employed by Penn-Dixie, you took a few trips to Las Vegas. Do you recall that?

A A couple of, I said. Probably.

Q Do you recall whether the expenses for those trips were charged to Penn-Dixie or were paid for by you?

A To the best of my knowledge, the cost of the trips to Las Vegas, to the best of my knowledge, I do not believe they were. If they were any, it would have been like the one night hotel or something like that, because the fare was part of the fare for coming back from California on a business trip.

Q Do you have any expense records which would show payment of your personal expenses on these trips?

A Well, my checkbook. I mean if I went back, if you want to give me the dates, I've got checks from God knows when back. I could always go through them and find out if I paid the hotel bill at probably the Desert Inn or something like that.

MR. EINSTEIN: I would ask,Mr. Zivyak, for the production of any records, charge slips, cancelled checks or the like, showing payments of expenses in Las Vegas or to or from Las Vegas during the period Mr. Schlick was employed by Penn-Dixie.

MR. ZIVYAK: I will take your request under advisement.

MR. EINSTEIN: I have nothing further.

MR. CIERNO: I have one or two more

questions, I am sorry, Mr. Schlick.

MR. ZIVYAK: That's perfectly all right.

EXAMINATION BY

MR. CHERNO:

Q Did Mr. Castle ask you to leave Penn-Dixie?

A On the contrary, I resigned after about six months and he begged me to stay, and he indicated he would change his ways, and then when I finally resigned, it was because of improper acts by Mr. Castle which were brought to the attention of the public accountants who sat in a meeting with me and Mr. Castle, and I said at that time I would not stay with the corporation.

At that time Mr. Castle again asked me to stay, and then when I left, I did not acceed to his request, he passed certain information out to Wall Street, which was,to say the least, a little derogatory --

Q When did he say about you?

A I beg your pardon?

Q What did he say about you?

A Oh, he indicated to a couple of analysts that I liked to play golf every day and go home in the afternoon and all that sort of stuff. So I had Mr. Castle sign a letter to the fact that I was leaving

of my own free will, because I did not agree with his policies, which he signed.

Q Do you have that?

A I believe I can find a copy, but you surely should have found it since you found all the other letters in your file. I will look for it.

MR. CHERNO: All right. I will ask your counsel to look for such a letter and please produce it if there is one.

THE WITNESS: Yes, I will look for it.

Q Would you say that situation was like the Champion Plywood situation, where Mr. Bendetsen asked you to leave?

A Absolutely not. Mr. Castle had no regard for people. He had no regard for the way in which he used the company's assets for his personal benefit. He had no regard for business operations where requirements recommended by cement plants were disregarded as to maintenance and improvements, and it was impossible to work with Mr. Castle, particularly since his hours were usually like from 2:00 o'clock in the afternoon to 2:30 in the morning.

Q These statements about playing golf and leaving early --

A There was nothing --

Q -- were they accurate statements?

A They were inaccurate statements. I can show from my country club records that if I played golf on, oh, I would say five business days in all the time I was with Penn-Dixie, it would be a lot. I am strictly a weekend golfer.

Q Do you like Mr. Castle personally, Mr. Schlick?

A I don't really dislike anybody, I mean from that standpoint. I am not that kind of person. All I can tell you about Mr. Castle is I feel very sorry for the people who work for him.

Q You say that you had your first conversation with Mr. Castle about leaving Penn-Dixie approximately six months --

A That is true.

Q -- into --

A I beg your pardon?

Q Six months.

A After I was with him.

Q After you were with Penn-Dixie.

A Yes.

Q Could you tell me the substance of that

conversation with Mr. Castle?

A Same sort of thing.

Q He said what, you said what?

A I told him I was leaving, that I could not work under the conditions he operated, the way he treated people, and the way he manipulated the finances and ran the operations.

Q And what did Mr. Castle say in this conversation to the best of your recollection?

A He asked me -- to my recollection? He asked me, he persuaded me to stay on, and that certain of the area for which I complained, he would try to do it a little more my way.

Q Did you go to Penn-Dixie with the expectation of assuming a different executive position than that which you were ultimately given at Penn-Dixie?

A Are you talking now about title or responsibility?

Q Let's take title to start with.

A Title, there was originally discussion of him becoming chairman and my becoming president but we finally settled on the fact that I would become executive vice president.

Q How about responsibilities?

A Responsibility, I expected to have all the responsibility that went to the, with the position in terms of finance and administration, which I must say never really became effective because of Mr. Castle's requirements that every decision including a $5 raise to a secretary, must have his signature and approval.

Q When Mr. Kushner joined the company was he given any responsibilities which you thought were in your area?

A No.

Q Was that a factor in your leaving at all?

A Oh, no, I liked Harvey Kushner, liked him very much.

Q He is a defendant in this action?

A Yes. That doesn't mean I don't like him.

Q And in none of these discussions that you had with Mr. Castle at this time were your gambling activities mentioned; is that your recollection?

A Absolutely not. In fact, at that time I did very little gambling. Might have bet on a weekend football game which Stanley Abel can attest to, because he was usually asking my advice on some of the games.

MR. CHERNO: All right. That's all.

MR. EINSTEIN: Do you have any questions?

MR. ZIVYAK: No.

MR. EINSTEIN: I want the record to indicate that I am in disagreement, Mr. Zivyak, with a substantial number of the objections and directions not to answer that you have made during the course of Mr. Cherno's examination.

MR. CHERNO: And yours.

MR. EINSTEIN: And mine. Of course, this is something that we will have to take up with the Court at an appropriate time.

MR. ZIVYAK: All right.

MR. CHERNO: The examination is adjourned pending the determination of various objections.

MR. ZIVYAK: Well, I regard the examination as completed. You do what you have to do. I don't regard it as adjourned.

MR. CHERNO: We have also asked you for a number of documents. If those documents lead to a requirement of further examination, we will have Mr. Schlick back.

In any event, I would like to get those

documents forthwith, for we believe they might be, or they are relevant to the pending class action motion.

I gather silence is assent.

MR. ZIVYAK: No, I am looking at my list of things. If you want a gratuitous remark, I will be glad to give it to you. I really can't see how they are relevant to the pending class action motion, but in any event, let's just, let's conclude and if we have to go back on the record and see what I have agreed to give you and see there are no questions, let's go off the record.

(Discussion off the record.)

(Whereupon at 3:35 p.m. the examination was adjourned.)

_____

JOHN SCHLICK

Subscribed and sworn to before me

this_____day of_____1975.

_____

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I N D E X

WITNESS	PAGE
John Schlick	4

E X H I B I T S

DEFENDANTS'
FOR IDENTIFICATION

1	Copy of affidavit in support of motion.	53
2	Letter dated August 21, 1969, by Mr. Schlick.	56
3	Memorandum dated July 24, 1969, entitled "Hausman Corporation," signed by John P. Schlick.	56
4	Letter dated October 1, 1969, on the letterhead of John P. Schlick, signed "Sincerely, John."	60
5	Copy of employment agreement.	63
6	Letter to Mr. Carlton Holstrom of the Bank of the Commonwealth and Mr. Theodore Platz of the Franklin National Bank, dated January 22, 1969.	80
7	Letter dated January 28, 1969, from the Franklin National Bank.	83
8	Letter dated January 28, 1969, from the Bank of the Commonwealth.	83
9	Document, Continental Steel Notice of Special Meeting of Stockholders and Joint Proxy Statement, dated March 29, 1973.	110

E

CERTIFICATE

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, WILLIAM DAVIS, a Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That JOHN SCHLICK, the witness whose deposition is hereinbefore set forth, was first duly sworn by me and that such deposition is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of September 1975.

William Davis
WILLIAM DAVIS, CSR

EXHIBIT 2

Minutes of the Special Meeting
of the Penn-Dixie Board of
Directors held on January 20, 1969

A special meeting of the Board of Directors of Penn-Dixie Cement Corporation was held at the office of the Corporation, 60 East 42nd Street, Borough of Manhattan, City and State of New York on January 20, 1969 at 12:00 Noon.

Present - Messrs. Jerome Castle
Robert E. Cryor
Daniel H. Eschen
Frederick I. Hausman
Alphonso J. Marcelle
Oliver K. Parry
John P. Schlick
Paul Windels, Jr.

constituting a quorum of the Board.

Absent - Mr. Alan C. Greenberg

Also present at the meeting by invitation were Messrs. George Berlstein, R. W. Lefferts and Paul M. Montrone.

The Secretary reported that a draft of the minutes of the Board of Directors meeting held December 17, 1968 and of the Executive Committee meeting held on December 18, 1968 had been distributed to all members of the Board and there being no changes, the drafts, as distributed were approved as the minutes of these meetings.

The Chairman led a long and comprehensive discussion of the stockholder's suit against certain officers, directors, and the Corporation, filed by one Harry Lewis through the law firm of Pomerantz, Levy, Houdeck & Block, at the conclusion of which it was decided to have Messrs. Castle, Schlick and Windels select a law firm or firms as attorney's for defense.

The Chairman reported that the Executive Committee had approved the purchase of 100,000 additional shares of Continental Steel Corporation common stock. The Chairman emphasized the desirability of further consolidating our position and indicated that because of the thin market it probably would be necessary to buy blocks of stock above the market price, the price of any such purchases to be supported by the recommendation of Bear Stearns & Co. and one other member of the New York Stock Exchange.

On motion duly made and seconded, it was unanimously

> RESOLVED, that the officers of the Corporation be and hereby are authorized to purchase up to an additional 100,000 shares of the common stock of Continental Steel Corporation.

The Chairman recommended that the Corporation purchase three companies in the aggregate, precast concrete and concrete block businesses in Hudson, New York. The Chairman stated that this purchase was vital to the Corporation's total aggregate picture and then he and Mr. Marcelle described the operations of the companies. The Chairman then reported on the terms of the proposed purchases. After discussion, on motion duly made and seconded, it was unanimously

> RESOLVED, that the Officers of the Corporation, or any of them are hereby authorized to conclude the purchase of all of the issued and outstanding stock of (a) Hudson River Concrete Products Corporation for $290,000 and $710,000 in notes

bearing interest at the rate of 6% per annum payable over 9 years in equal annual instalments, and (b) Hudson River Rock Corporation and Racon Hauling Corporation for 33,333 shares of the Corporation's common stock, and to enter into definitive agreements and take such other action as necessary and appropriate to carry out such purchases including the issuance of 33,333 shares of the Corporation's authorized but unissued capital stock in consideration for such purchases.

The Chairman then stated that the Corporation would be required by the New York Stock Exchange to list the shares issued in connection with the Hudson River Rock Corporation and Racon Hauling Corporation transaction and recommended that the Board approve the filing of an application with the Exchange for this purpose. After discussion, on motion duly made and seconded, it was unanimously

RESOLVED, that the officers of the Corporation, or any of them, are hereby authorized to take such steps as are necessary to effect listing of the 33,333 shares of the Corporation's capital stock to be issued pursuant to the purchase of Hudson River Rock Corporation and Racon Hauling Corporation, and that John P. Schlick, Executive Vice President of the Corporation, be and hereby is designated as the Corporation's representative to appear before Exchange officials, and make such changes in the application as are necessary and otherwise to take such steps as may be necessary to effect listing.

Under other business, the Chairman reported:

1. The receipt and acceptance of Mr. Doolittle's resignation as of May 31, 1969, the expiration of his employment contract.

2. The completion of the $15,000,000 term loan.

3. The consumation of the Concrete Plank Acquisition.

4. Estimated consolidated earnings for the year 1968 in excess of $1.50 per share.

On motion the meeting adjourned.

Secretary

EXHIBIT 3

Letter dated January 22, 1969, from John P. Schlick to Carleton Holstrom and Theodore Platz

January 22, 1969

Mr. Carleton Holstrom
Bank of the Commonwealth
719 Griswold Street
Detroit, Michigan 48231

and

Mr. Theodore Platz
Franklin National Bank
410 Madison Avenue
New York, N.Y. 10017

Dear Carl and Ted:

The Board of Directors has given authority to the management to purchase additional shares of Continental Steel. In our negotiations to finalize the term loan this was discussed many times and it was my understanding that the restrictions in the term loan agreement would not restrict our acquisition of additional shares of Continental Steel. Much to my chagrin, it appears that this specific exception somehow or other fell through the crack. It was referred to in Para. 7.3 pertaining to mergers and transfer of assets, which gives credence to the fact that Continental Steel was a special situation.

Inasmuch as we are moving to acquire additional investment in Continental Steel, I respectfully request the permission of your banks to acquire up to 51 per cent of the outstanding stock of Continental Steel under the provisions of Para. 7.2 pertaining to investments, loans and guarantees. While the Board's approval was to purchase up to 100,000 shares, this would still leave us shy of 51 per cent by approximately 40,000 shares. However, I think it would be advisable at this time for the banks to grant their approval to purchase up to 51 per cent.

In view of the limited trading activity in Continental Steel stock, it is obvious that we will only be able to accomplish our goal by purchasing large blocks that might be available, which obviously will command a much higher price than the present market value. In making any purchase of a large block, we will look to appraisals which we will secure from at least two Stock Exchange firms. The stock is presently

(continued)

Messrs. Carlcton Holstrom — January 22, 1969
Bank of the Commonwealth, Detroit, Michigan
and Theodore Platz
Franklin National Bank, New York, N.Y.

traded at about $39.00 and while we have no idea of what premiums may have to be paid to acquire a large block, I would imagine it would run somewhere in the $50-60 range. Penn-Dixie presently holds 389,779 shares at a cost of approximately $22,600,000.

As you are well aware, if and when we acquire 51 per cent of Continental Steel the consolidation of their figures with Penn-Dixie's will have a very salutary effect on our working capital, as well as on our reported earnings.

It is of the utmost importance that this information be kept completely confidential as you can appreciate that any "leak" could hinder our efforts and prove very costly. I will appreciate it if you can advise me of your approval as soon as possible.

Very truly yours,

John P. Schlick

JPS:lc
cc: Messrs. J. Castle
R.W. Lefferts

BEST COPY AVAILABLE

EXHIBIT 4

Letter dated January 28, 1969, from
Theodore A. Platz, Jr. to John P. Schlick

FRANKLIN NATIONAL BANK
410 MADISON AVENUE
NEW YORK, N. Y. 10017
212-425-1400

CABLE ADDRESS
FRANKBANK, NEW YORK

January 28, 1969

Mr. John P. Schlick
Executive Vice President
Penn-Dixie Cement Corporation
60 East 42nd Street
New York, New York 10017

Dear John:

In response to your letter of January 22, 1969, Franklin National Bank hereby agrees to waive the provisions of Section 7.2 of our Loan Agreement dated September 30, 1968 to permit Penn-Dixie Cement Corporation to acquire up to 51% of the outstanding stock of Continental Steel Corporation, provided, however that Penn-Dixie's investment in Continental Steel is not to exceed $32,000,000.

Sincerely,

Theodore A. Platz, Jr.

Theodore A. Platz, Jr.
Vice President

TAP/amw

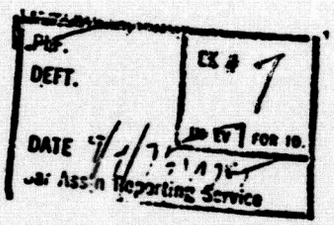

EXHIBIT 5

Letter dated January 28, 1969, from
Bernard L. Lavery to John P. Schlick

BANK OF THE COMMONWEALTH

January 28, 1969

Mr. John P. Schlick
Executive Vice President
Penn - Dixie Cement Corporation
60 East 42nd Street
New York, New York 10017

Dear John:

In response to your letter of January 22, 1969, Bank of the Commonwealth hereby agrees to waive the provisions of Section 7.2 of our Loan Agreement dated September 30, 1968 to permit Penn - Dixie Cement Corporation to acquire up to 51 per cent of the outstanding stock of Continental Steel Corporation, provided, however, that Penn - Dixie's investment in Continental Steel is not to exceed $32,000,000.

Very truly yours,

Bernard L. Lavery
Assistant Vice President

cc: Mr. Theodore A. Platz, Vice President
Franklin National Bank

EX # 6
DEFT.
FOR ID.
DATE
Bar Ass'n Reporting Service

5

EXHIBIT 6

Minutes of the Special Meeting of the Penn-Dixie Board of Directors held on June 26, 1969

A Special Meeting of the Board of Directors of Penn-Dixie Cement Corporation was held at the office of the Corporation, 60 East 42nd Street, Borough of Manhattan, City and State of New York on June 26, 1969 at 4:00 p.m.

Present - Jerome Castle
Daniel E. Eschen
Alan C. Greenberg
Alfonso J. Marcelle
Oliver K. Parry
Paul Windels, Jr.
John P. Schlick
Patrick H. Hoy
Harvey Kushner

constituting a quorum of the Board.

Absent - Robert E. Cryor

Also present at the meeting by invitation were Mrs. Jervis Jones, and Messrs. R. W. Lefferts and George Berlstein.

Mr. Jerome Castle presided and Mr. R. W. Lefferts, Secretary of the Corporation, recorded the minutes.

The Secretary reported that drafts of minutes of the Board of Directors' meeting held on May 20, 1969 and of the Executive Committee meetings held on May 28 and June 20, 1969 had been distributed to all Board members, and, with one minor correction, the drafts as distributed were approved as the minutes of the respective meetings.

The Chairman reported that Mr. Harvey Kushner had accepted his election as a director, effective today, as provided in the Board resolution adopted at the last meeting and instructed the secretary to invite Mr. Kushner to the meeting. At this point, Mr. Kushner joined the meeting and participated

in its deliberations.

The Chairman reported that the Corporation now owns slightly over 50% of the common shares of Continental Steel Corporation stock and recommended that authorization be given to purchase additional Continental Steel Corporation stock up to 55% of the shares outstanding. Whereupon on motion duly made and seconded, it was

> RESOLVED, that the officers of the corporation be, and hereby are, authorized to purchase additional shares of Continental Steel Corporation up to 55% of the shares outstanding.

The Chairman asked Mrs. Jones to report on the necessity for a proposed improvement in cement loading facilities at Plant #9, West Winfield, Pa. She emphasized faster loading would be needed to fulfill sales commitments already on the books and that a corollary benefit would be less chance of contamination of the different types of cement. Whereupon, after discussion, on motion duly made and seconded, it was

> RESOLVED, that an appropriation of $277,000 for improved cement loading facilities at Plant #9, West Winfield, Pa. be, and hereby is, authorized and approved.

The Chairman recommended that Alfonso J. Marcelle be elected a Corporate Vice President of this Corporation. Whereupon on motion duly made and seconded, it was unanimously

> RESOLVED, that Alfonso J. Marcelle be, and hereby is, elected Corporate Vice President.

John P. Schlick, Executive Vice President, recommended that approval be given for the Corporation's subsidiary, CTL-Dixie, Inc. to purchase a machine shop for $70,000 and make

subsequent investments therein of approximately $130,000. He reminded the Board that CTL-Dixie, Inc. spends considerable sums of money on outside machine shop work and would be able to place a substantial volume of business with this company. He further estimated that after the additional investment the machine shop would earn $30,000 annually after taxes. Whereupon on motion duly made and seconded, it was

> RESOLVED, that the officers of CTL-Dixie, Inc. be, and hereby are, authorized to purchase Stewart Machine Shop for $70,000 and to make further investment therein of $130,000.

Mr. Alan Greenberg presented an excellent comprehensive report on how a corporation can protect itself against a takeover attempt, emphasizing the difficulty in preventing such a takeover by interests with sufficient cash when market conditions are favorable for such an effort.

On motion, the meeting adjourned.

A. Wohl Jr.
Secretary

EXHIBIT 7

Letter dated June 18, 1969, from
Arthur D. Sporn, Esq. to Penn-Dixie,
for the attention of John Schlick

J.C. — Assume you will handle.

170a

BARRETT KNAPP SMITH & SCHAPIRO
(ROOT BARRETT COHEN KNAPP & SMITH)
26 BROADWAY
NEW YORK, N.Y. 10004
TEL: (212) 422-0100
CABLE: ROOTBAR

JOHN J. BARRETT
WHITMAN KNAPP
W. MASON SMITH
DONALD SCHAPIRO
CARL F. ROSSE, JR.
DAVID SIMON
DAVID D. BROWN III
MARTIN F. RICHMAN
ARTHUR D. SPORN
GORDON D. HENDERSON
LAWRENCE NIRENSTEIN
LAURANCE V. GOODRICH
EDMUND R. SCHROEDER
ROBERT F. AMBROSE

44-46

JUN 23 1969

June 18, 1969

Penn Dixie Cement Corporation
60 East 42nd Street
New York, New York 10017

Attention: Mr. John Schlick
Executive Vice President

Re: Continental Steel Corporation

Dear Sirs:

We have been asked by Societe Overhold, S.A., a Luxembourg limited liability company, to inquire as to your possible interest in purchasing from it a bloc of 8,000 shares of common stock, $7 par value, of Continental Steel Corporation, at a purchase price of $55 per share. Of these 8,000 shares, 714 were purchased on the open market; the remaining 7,286 were acquired by Societe Overhold, S.A. last month pursuant to an investment letter under which any further transfer of the shares can be made only upon establishing to the satisfaction of Continental Steel Corporation that the proposed transfer may be effected without registration under the Securities Act of 1933. For this reason, the sale in question could probably be consummated only several weeks, at a minimum, after any agreement thereon had been reached; in addition, it would require the purchaser to confirm that he was acquiring the shares for investment and not with a view to the distribution thereof, and to accept the shares subject to a restriction similar to that now in effect upon any further transfer. We understand, however, that in light of your present holdings in Continental Steel Corporation, such a representation and restriction on further transfer would not add any appreciable additional limitation to your freedom to dispose of the shares in question.

We should be pleased to hear from you if the above proposal should be of interest on your part.

Very truly yours,

Arthur D. Sporn

cc: Mr. Castle

EXHIBIT 8

Minutes of the regular meeting of the Board of Directors of Continental Steel Corporation ("Continental"), held on January 21, 1969

MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF CONTINENTAL STEEL CORPORATION

Held at the offices of the Corporation, Kokomo, Indiana, on Tuesday, January 21, 1969, with the following present: Messrs. F. R. Davis, William P. Flynn, John P. Fredrick, A. L. Miller, G. V. Reed, Loren E. Souers, John J. Weldon, Richard K. Weyant and Howard C. Williams. Absent: Messrs. Carroll H. Blanchar, Jerome Castle and W. G. Harter.

The meeting was called to order at 11:00 a.m., C.D.S.T., with Mr. Miller presiding and Mr. Jack H. Hite, Secretary, recording the minutes.

The minutes of the previous meeting of the Board of Directors, held on November 19, 1968, were approved as read.

Mr. Miller reported on our operations during 1968. Production records established for the year included: Ingots - 390,424 net tons, Rods - 300,681 net tons, Wire (Rods Ripped) - 236,991 net tons, Nails - 42,288 net tons, and Galvanized Chain Link Fabric - 19,722 net tons. The electric furnace operation continues to progress with 35,515 net tons of ingots produced during December.

The offer to purchase the business, personal and real property owned by Dale A. Yeoman and Clare D. Yeoman, approved by the Board at the last meeting, was not acceptable to Mr. Yeoman, stated Mr. Miller. There are no plans presently for further negotiations.

The preliminary statement of financial position as of December 31, 1968, and the preliminary income statements for the month of December and for the twelve months ended December 31, 1968, were presented and discussed.

Mr. Reed reported that we will request the revolving loan termination date be extended one year, to March, 1970. Within the next few weeks, we will be taking all, or part, of the remaining $1,000,000 available under the loan agreement.

After discussion, on motion by Mr. Reed, seconded by Mr. Flynn, the following resolution was unanimously adopted:

> RESOLVED, That a quarterly dividend of twenty-five cents a share be and the same is hereby declared and ordered paid on common shares of Continental Steel Corporation, payable March 17, 1969, to holders of record February 24, 1969.

At this time, Mr. Hite left the meeting and phoned the dividend information to the Chicago office of Dow Jones & Company for immediate release.

Mr. Weyant reported that 1968 was the poorest profit year in the history of Enterprise Wire Company. Principal causes included reduction in sales due to phasing out of the concertina barbed wire contract, plant personnel problems and increased cost of [illegible]. Mr. Weyant said that the profit projection for 1969 [illegible] profit of $84,000, to come mostly in the third and fourth quarters.

Mr. James C. Jacobsen, Controller, next presented the 1969 Profit Plan Report for the Kokomo plant. The report indicated that the goal for 1969 of 314,000 net tons shipped, with a net profit before tax of $5,625,000, could be met if adverse situations were not encountered during the year.

Provision for the Annual Shareholders' Meeting and nomination of Directors to be elected thereat was the next order of business. Mr. Weyant requested that he not be nominated as a Director for a new term. Mr. Miller than recommended that Mr. John P. Schlick, Executive Vice President of Penn-Dixie Cement Corporation, be nominated for a three-year term in lieu of Mr. Weyant.

After discussion, on motion by Mr. Flynn, seconded by Mr. Davis, the following resolution was unanimously adopted:

RESOLVED:

1. That the Secretary be and he is hereby instructed to issue a notice, in accordance with the Bylaws, to all common shareholders, of the annual meeting of the shareholders of this Corporation, to be held at its principal office at Kokomo, Indiana, on Tuesday, April 15, 1969, at 10 a.m., C.D.S.T., for the purpose of electing four directors and transacting any other business that may properly be brought before said meeting or any adjournment thereof;

2. That the close of business on February 24, 1969, be and it is hereby designated as the record date for determining the shareholders entitled to receive notice of and to vote at said annual meeting;

3. That the Board hereby nominates for directors, each for a term of three years, the following persons for whom the proxies hereinafter designated (unless otherwise instructed by any shareholder in respect of the voting of his own shares) shall vote the proxies that may be given to them by the shareholders: namely, Jerome Castle, John P. Schlick, Loren E. Souers and John J. Weldon; and

4. That the Secretary be and he is hereby instructed, together with the notice of said annual meeting, to furnish to all common shareholders a proxy statement and form of proxy, both in the forms submitted at this meeting and hereby approved, soliciting on behalf of management proxies from said shareholders, empowering A. L. Miller, G. V. Reed

and H. C. Williams, or any of them, who are hereby designated as the Proxy Committee, to be the proxies of such shareholders to represent them and vote in their behalf at said meeting, such proxies, however, to be revocable at will, prior to said meeting, by the shareholders giving the same. Said proxy statement shall state that it is intended that the proxies given will be voted for the election of the nominees above named as directors, unless otherwise instructed as aforesaid.

On motion by Mr. Weldon, seconded by Mr. Fredrick, the following resolution was unanimously adopted:

> RESOLVED, That the President, or, in his absence, any Vice President designated by the Executive Committee, be authorized to vote all shares of any subsidiary or joint venture owned by Continental Steel Corporation at any annual or special meeting of shareholders thereof.

Mr. Miller next requested the opinion of the Board members regarding the advisability of having independent specialists examine our Executive Incentive Compensation Plan and make recommendations toward updating the Plan. There was discussion, and it was the consensus that the Executive Committee should contact such specialists concerning this matter, and report their findings to the Board.

Mr. Reed discussed our interest in Stevens Spring Company, Elwood, Indiana, a $500,000 per year spring wire customer. During 1966, in order to help keep the company solvent and to forestall acquisition by outside interests, we increased our credit exposure to approximately $100,000, and set up a Trusteeship which arranged a standby agreement with large creditors. James Hardy, our credit manager at the time, was elected a Director, and has since served as Chairman of their Board. Under this three-year agreement, the earnings of the company have steadily improved from a $135,000 loss in 1965 to a net profit of $130,000 in 1968. The agreement provides that Stevens could, by reimbursing standby creditors, regain full control of the company. Acquisition activity, 1968 earnings, plus the desire to maintain this valuable customer, have prompted us to negotiate a minority (40%) interest in the company, with first refusal to meet outside offers for the remainder of the outstanding shares, or, if we did not acquire such shares, to have our shares included in any subsequent sale. The cost of our interest in the company will be $100,140.60, of which $75,000 will be in reduction of their debt for wire supplied.

After discussion, on motion by Mr. Davis, seconded by Mr. Weldon, and unanimously approved, Mr. A. L. Miller, President, was authorized to sign an agreement with Stevens Spring Company to acquire 200 shares (40%) of the outstanding stock of said company, and with other provisions as described above. COPY OF AGREEMENT ATTACHED AS EXHIBIT R.

There being no further business, the meeting adjourned.

Chairman

Secretary

EXHIBIT 9

Minutes of the annual meeting of the shareholders of Continental, held on April 15, 1969

MINUTES OF ANNUAL MEETING OF THE SHAREHOLDERS OF CONTINENTAL STEEL CORPORATION

Held, pursuant to notice, at 10:00 a.m., C.D.S.T., April 15, 1969, at the offices of Continental Steel Corporation, 1109 South Main Street, Kokomo, Indiana.

The meeting was called to order, and on motion by Mr. F. R. Davis, seconded by Mr. William P. Flynn, Mr. A. L. Miller was unanimously chosen as Chairman, and Mr. Jack H. Hite as Secretary of the meeting.

Upon motion by Mr. G. V. Reed, seconded by Mr. Carroll H. Blanchar, Messrs. E. D. Storms and Jack H. Hite were appointed as tellers to check the proxies and to ascertain the number of shares of the company's stock represented in that manner at the meeting, and to ascertain the number of shares of the company's stock represented in person.

The tellers reported as follows:

"We, the undersigned tellers, hereby certify that there is represented at the annual shareholders' meeting of Continental Steel Corporation, held this 15th day of April, 1969, the following stock, per Exhibit A attached to and hereby made a part of this report:

Common stock present in person - 31,156 Shares
Common stock present by proxy* - 910,531 Shares
Total - 941,687 Shares

"We further certify that there are presently issued and outstanding 1,075,408 shares of common stock, of which 14,565 shares are owned by the corporation and held as Treasury shares, having no current voting rights.

"We certify that all proxies counted and included in this report are in due and proper form.

"*Either by proxy committee or otherwise."

Upon motion by Mr. Loren E. Souers, seconded by Mr. Clark R. Strayer, the following resolution was unanimously adopted:

RESOLVED, That the report of the tellers be accepted and that the proxies be received and placed on file, and that copies of the proxy, annual meeting notice and proxy statement, and the Annual Report be included as Exhibits to these minutes.

Since the tellers' report showed that a quorum was present, the Chairman announced that the meeting was ready for the transaction of business as set forth in the notice to shareholders.

The minutes of the last shareholders' meeting, held on March 19, 1968, were approved as read.

The President next made his report to the Shareholders' Meeting, a copy of which is attached as Exhibit E to these minutes.

The Chairman announced that the election of four members to the Board of Directors was the next order of business. Mr. Richard C. Vonnegut then nominated the following persons, Messrs. Jerome Castle, John P. Schlick, Loren E. Souers and John J. Weldon, who have been proposed by management, for election to the Board of Directors for respective three-year terms, commencing as of this annual meeting for 1969 and ending as of the date of the annual meeting for 1972, and until their successors are elected and qualified.

Mr. Hite then announced that two proxy forms representing 40 shares, had been received so marked as to designate the management proxy committee as proxies for the shareholders involved, but nominating Leonard J. Polys of Detroit, Michigan, for election to the Board, and directing that such shares be voted for his election to such office. Mr. Hite stated that the proxies in question appeared to be in good form and, unless challenged, he would show Mr. Polys as having been nominated and would so record the vote of the 40 shares represented by the proxies.

The Chairman then asked if there were any other nominations for the Board of Directors. Hearing none, he declared that nominations were closed and requested Mr. Hite to announce the results of the balloting for election of new directors.

Mr. Hite then cast the ballot as follows:

"I hereby cast

931,714 votes for Mr. Jerome Castle,
931,724 votes for Mr. John P. Schlick,
931,812 votes for Mr. Loren E. Souers,
931,812 votes for Mr. John J. Weldon, and
40 votes for Mr. Leonard J. Polys,

as directors of Continental Steel Corporation."

The Chairman thereupon announced that the results of the balloting showed that Messrs. Castle, Schlick, Souers and Weldon were elected to the Board of Directors for terms of three years.

After general discussion, upon motion duly seconded and passed, the meeting adjourned.

Arthur L. Miller
Chairman

Secretary

EXHIBIT 10

Minutes of the regular meeting of the Continental Board of Directors, held on Aprii 15, 1969

MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF CONTINENTAL STEEL CORPORATION

Held at the offices of the Corporation, Kokomo, Indiana, on Tuesday, April 15, 1969, immediately following the Annual Shareholders' Meeting, with the following present: Messrs. Carroll H. Blanchar, F. R. Davis, William P. Flynn, John P. Fredrick, W. G. Harter, A. L. Miller, G. V. Reed, John P. Schlick, Loren E. Souers, John J. Weldon and Howard C. Williams. Absent: Mr. Jerome L. Castle.

Mr. Miller expressed his congratulations to the three re-elected Directors, and particularly welcomed Mr. Schlick, a newly elected Director.

Upon motion by Mr. Souers, seconded by Mr. Reed, and unanimously adopted, Mr. A. L. Miller was chosen temporary chairman of the meeting and Mr. Jack H. Hite was chosen temporary secretary to record the minutes thereof.

The minutes of the previous meeting of the Board of Directors, held on March 18, 1969, were read and approved as corrected.

On motion by Mr. Harter, seconded by Mr. Flynn, the following officers were elected:

Arthur L. Miller	- President and Chairman of the Board
George V. Reed	- Vice President and Treasurer
Howard C. Williams	- Vice President - Sales
F. Raymond Davis	- Vice President - Purchases
Donald C. Horsman	- Vice President - Operations
Joe W. Myers	- Vice President - Industrial Relations
D. James Pickett	- Vice President - Coordination and Planning
Jack H. Hite	- Secretary
E. Dale Storms	- Assistant Secretary
James E. Hardy	- Assistant Treasurer

(Messrs. Miller, Reed, Williams and Davis did not vote.)

On motion by Mr. Fredrick, seconded by Mr. Davis, the following Executive Committee was elected:

Arthur L. Miller - Chairman
George V. Reed
Howard C. Williams

(Messrs. Miller, Reed and Williams did not vote.)

Mr. Miller next discussed the membership of the Salary and Executive Incentive Compensation Committee. Since two of the three members of the present committee will retire from the

Board next year, he felt that it would be in the best interest of the Committee and of the company to replace one of these members this year. Mr. Flynn has expressed his willingness to relinquish his place on the committee this year. Mr. Miller stated that Mr. Schlick has had valuable experience in these areas during his business career and would make a valuable contribution to the committee, and he therefore recommended that Mr. Schlick be elected to the aforementioned committee. On motion by Mr. Flynn, seconded by Mr. Blanchar, the following Salary and Executive Incentive Compensation Committee was elected:

William G. Harter - Chairman
Loren E. Souers
John P. Schlick

The statement of financial position as of March 31, 1969, and the income statements for the month of March, and for the three months ended March 31, 1969, were discussed.

Mr. Miller reported the following encouraging signs:

(1) The March ingot production from the electric furnaces set a new record of 37,315 net tons, some 1,800 tons better than the old record.

(2) First quarter sales prices averaged about $7.00 per ton better than a year ago, reflecting some price increases, as well as a more selective product mix, resulting in a higher net mill return.

Mr. Reed handed out copies of the Summary of Major Capital Appropriations, which shows $2,770,000 remaining to be spent on approved appropriations, with all but about $1,000,000 to be spent prior to July 1, 1969.

After discussion, on motion by Mr. Reed, seconded by Mr. Souers, the following resolution was unanimously adopted.

RESOLVED, That a quarterly dividend of twenty-five cents a share be and the same is hereby declared and ordered paid on common shares of Continental Steel Corporation, payable June 16, 1969, to holders of record May 26, 1969.

At this time, Mr. Hite left the meeting and phoned the dividend information to the Chicago office of Dow Jones & Company for immediate release.

Mr. Flynn asked how many shareholders the company presently has, as a result of the substantial holdings of Penn-Dixie Cement Corporation. Mr. Reed replied that the company now has about 3,300 shareholders. Mr. Weldon then asked Mr. Schlick whether Penn-Dixie continued to have a desire for Continental to retain its listing on the New York Stock Exchange. Mr. Schlick replied that it was considered very important to Penn-Dixie that such listing be retained, and it intended to give any required assistance toward that end.

There being no further business, the meeting adjourned.

Edward-Miller
Chairman

Secretary

EXHIBIT 11

Memorandum dated July 24, 1969, from John P. Schlick to Jerome Castle

July 24, 1939

Mr. Jerome Castle — New York

John P. Schlick — New York

HAUSMAN CORPORATION

Purpose of this memorandum is to summarize certain situations regarding Hausman Corporation.

FORMS DIVISION - Fred Hausman and I and, I believe, Jervis Jones concur that we should either sell or liquidate the Forms Division. It is apparent that this operation cannot make a satisfactory return, if any at all, on its investment of close to $1,000,000.

If we were to liquidate the operation, I am afraid we may have to take a loss of $200,000 to $300,000 in disposing of the inventory and completing the jobs in progress. It is my feeling that every attempt should be made to sell this operation on a book value basis. In order for Fred Hausman to move ahead on a proper basis, it is necessary to have your agreement on the following:

1. that we should move to eliminate this activity.

2. that we should talk to potential buyers.

Once you have indicated your concurrence, Fred can set in wheels the procedures for eliminating certain personnel and not taking on any new jobs.

HAUSMAN-PHOENIX-CONTINENTAL - I think it would be to our advantage to sell the Hausman Fabricating operations to Continental-Phoenix without the Forms Division. Based on the profits of the Fabricating Division, it is my feeling that we could get a slight premium over the book value of the Fabricating Division which might help to offset some of the loss if we must liquidate the Forms Division.

Assuming the successful sale of the Fabricating Division to Continental-Phoenix, Hausman operations should really be part of the Phoenix operation; and I would suggest we move as quickly as possible to anticipate the other 50% of Phoenix from Union Tank Company.

If and when Hausman and Phoenix are to get together, I would suggest the following organization. Gosselin should be President and Chief Operating Officer and Fred Hausman should be Chairman with Marketing and Planning responsibilities. I think this would make a very workable arrangement and would not necessarily require the movement of Fred Hausman from Toledo. If this setup makes any sense, you might further consider putting both Jack Gosselin and Fred Hausman on the Continental Steel Board.

HAUSMAN-DENVER - I want to repeat that I feel the Denver Albuquerque situation is very vulnerable and over the next two or three years may reduce its profitability considerably unless something is done.

Both Border Steel and CF&I have been over the years the major suppliers to the Hausman-Denver-Albuquerque operation. Both these companies have established or acquired their own Fabricating Division. Another large steel company has also affiliated itself with a fabricating operation in the Denver area. This means that these companies will be in a much more competitive position to bid on the larger jobs leaving the independents, of which Hausman is the largest, to bid the smaller, less profitable jobs. I think we should do one of two things. Establish a long-term, favorable supply relationship on a contract basis with either CF&I or Border or some other steel mill if that is possible; or we should attempt to sell Hausman-Denver-Albuquerque operation to CF&L. As you know, CF&I is building a large reinforcing steel bar mill and will be hungrier than ever for captive business. The Hausman operations could supply this.

Tom Evans of the Crane Company is now the majority stock owner of CF&L. I think it would be wise for somebody to sit down with Tom Evans to determine what his plans might be and whether or not Hausman can be a part of them either as a major long-term user or as a subsidiary of CF&L. I know Tom Evans and feel that he would be receptive to sitting down and discussing the situation.

HAUSMAN BOARD OF DIRECTORS - There are three directors on the Hausman Board - you, Fred Hausman and I. I would suggest that Harvey Kushner replace me on the Board. Harvey is a Vice President of the Cement Corporation, and this would put him in contact with Fred on any planning he might have. I realize Jervis Jones is much more familiar with the Hausman operations and feel she should be given a responsibility of operating liaison with Fred.

John P. Schlick

JPS:eb
cc: Mrs. R. L. J. Jones
Mr. H. Kushner

EXHIBIT 12

Letter dated October 9, 1969, from
John P. Schlick to Jerome Castle

A.V Jones WL
188a

1. Will pay -
2. no further expenses unless authorized in writing

JOHN P. SCHLICK
8 EAST PLACE
CHAPPAQUA, NEW YORK 10514
(914) 238-4884

October 1, 1969

Dear Jerry:

I am enclosing my statement for the month of September. Most of the time was accumulated in the early part of the month on the Life of America acquisition.

I am sorry you were unable to have me at your meeting with Manufacturers-Hanover but am sure you were able to handle it satisfactorily. If I can be of any further use let me know.

Sincerely,
John

EX # 4
DEPT.
DATE
Duplicating Service
NOV 1 -
6 1969

Affidavit of Paul M. Montrone
of October 7, 1975, and exhibit
thereto (filed October 10, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

- against -

PENN-DIXIE CEMENT CORPORATION, et al.,

Defendants.

73 Civ. 1467 (C.M.M.)

AFFIDAVIT

STATE OF NEW HAMPSHIRE)
: ss.:
COUNTY OF ROCKINGHAM)

PAUL M. MONTRONE, being duly sworn, deposes and says:

1. I was formerly a Vice President of Penn-Dixie Cement Corporation ("Penn-Dixie"). I left Penn-Dixie in 1969, and am presently the Senior Vice President and Chief Financial Officer of Wheelabrator-Frye Inc.

2. I have read the deposition testimony of John Schlick, another former officer of Penn-Dixie, to the

effect that he had conversations with me in which I told him that Penn-Dixie had caused certain of its own overhead and other expenses to be improperly charged or allocated to Continental Steel Corporation ("Continental"). Pages 8-11 and 26-27 of Mr. Schlick's deposition, which contain this testimony, are attached hereto as Exhibit "A".

3. Mr. Schlick's testimony is both untrue, and, I believe, highly irresponsible. I never had any conversation with him in which I told or suggested to him that Penn-Dixie had improperly charged or allocated costs to Continental or, indeed, that Penn-Dixie had ever allocated or charged any costs, properly or improperly, to Continental, nor did I have any conversations with Mr. Schlick from which such an inference could be drawn. I could not possibly have had such a conversation with him, since I have no information or knowledge whatever that any such costs were ever charged or allocated to Continental. In fact, when I was with Penn-Dixie, to my knowledge, Penn-Dixie did not charge any such costs to Continental, nor did it allocate to Continental any overhead expenses. I have absolutely no reason to believe that there was any change in this regard after my departure.

4. Mr. Schlick also testified specifically that I told him that "the cost of Penn-Dixie overhead and the

accounting services in Pennsylvania where the main office of the accountant was" were in part charged to Continental. This is also untrue. I told Mr. Schlick nothing of the sort, and, as noted, I have no knowledge or information whatever that any such charges were made. As I pointed out, when I was with Penn-Dixie, no such charges were made.

PAUL M. MONTRONE

Subscribed and sworn to
before me this 7th.
day of October, 1975.

Notary Public
MY COMMISSION EXPIRES AUGUST 13, 1980

were improperly charged to Continental?

MR. EINSTEIN: You mean any Penn-Dixie expenses.

Q Any Penn-Dixie expenses were improperly charged to Continental.

A I have no specific facts during the time after my resignation from Penn-Dixie, but from conversations with various people I have the knowledge that certain expenses, the use of the plane, allocation of corporate overhead, were charged to Continental.

Q Let us get specific. First, tell us who the people are and when you had these conversations.

MR. ZIVYAK: Wait. Excuse me. Several of these conversations and discussions occurred after the commencement of this litigation and occurred in conversations which were fostered in great measure in preparation for the trial of this litigation, and the notes and memoranda and knowledge derived from those conversations are attorney's work product.

MR. CHERNO: You have an amended complaint here which makes all kinds of new allegations and I can't conceive that the basis of those allegations is attorney work product.

EXHIBIT "A"

If you want to present to the Judge the statement that Mr. Schlick was unable to give one specific, and when asked for specifics about his claim said that all specifics are attorney work product, I can argue that with you. But I am now asking Mr. Schlick for conversations which he had from which he said he derived the information both in his original complaint and in this new document which was served on me two weeks ago.

Q Can you tell us, Mr. Schlick, when was the first of these conversations and who was it with?

A Over a period I have had conversations with Dr. Montrone.

Q And what was Dr. Montrone's relationship with Penn-Dixie or Continental?

A Dr. Montrone was a vice president of Penn-Dixie until approximately, oh, I guess I have got to say until approximately four or five years ago.

Q And when did you have these conversations with him?

A At various times over the years, because I kept a contact with him.

Q When did he first tell you about these

expenses?

A Oh, I would say three or four years ago at a luncheon.

Q 1972?

A I beg your pardon?

Q 1972?

A Somewhere in that area.

Q What did he tell you in 1972, specifics, now?

A Specifically, I don't recall specifically what he told me other than he gave me the basis for believing that there were improper allocations of costs.

Q I have trouble understanding how he could give you that basis without specifics. Did he name any particular cost to you?

MR. ZIVYAK: Objection as to form. Can you rephrase it?

MR. CHERNO: Can you read the question?

(The pending question was read back by the reporter.)

Q I will ask the last part of that question. Did he mention any specific cost to you?

A He mentioned the cost of Penn-Dixie overhead and the accounting services in Pennsylvania where the main

office of the accountant was, which were in part being charged to Continental.

Q What did he say about those costs?

A I don't know specifically what he says, but he did imply that they were excessive.

Q Did you ask him for any particulars?

A No.

Q Did he show you any documents?

A No.

Q What else did Mr. Montrone tell you?

A That he was very happy to get out of Penn-Dixie.

Q Was he asked to leave Penn-Dixie?

A Oh, no. He left of his own accord.

Q What else did he tell you about costs, expenses?

A That,at the moment is all I can recall about the cost.

Q That's all you can recall about costs insofar as they relate to Dr. Montrone or all you can recall about costs at all?

A That is all, yes.

Q You have no other specifics in terms of any cost of Penn-Dixie that you claim was improperly charged to Continental?

Affidavit of Fred Hausman of
September 30, 1975, and exhibits
thereto (filed October 10, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

- against -

PENN-DIXIE CEMENT CORPORATION, et al.,

Defendants.

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73 Civ. 1467 (C.M.M.)

AFFIDAVIT

STATE OF OHIO)
: ss.:
COUNTY OF LUCAS)

FRED HAUSMAN, being duly swor , deposes and says:

1. Until November of 1974, - was the President or Chairman of the Board of Hausman Corporation, which, until that time, was a subsidiary of Penn-Dixie Cement Corporation ("Penn-Dixie"), now Penn-Dixie Industries, Inc. In November, 1974 Hausman became a division of Penn-Dixie Steel Corporation (formerly Continental Steel Corporation), a subsidiary of Penn-Dixie Industries, and I am presently employed by Penn-Dixie Steel Corporation. I have been associated with Hausman Corporation for about 40 years.

2. I have read the deposition testimony of John Schlick, a former officer of Penn-Dixie who left Penn-Dixie

in 1969, that he had had a conversation with me about an alleged 1971 Florida real estate transaction involving Continental Steel, and that I had told him that this transaction was being done as a favor to a Penn-Dixie customer and that it was not a profitable transaction for Continental Steel. Pages 21-24 of Mr. Schlick's deposition, which contain this testimony, are attached hereto as Exhibit "A".

3. This testimony by Mr. Schlick is not correct. To the best of my recollection, I never had any conversation whatever with Mr. Schlick about any Florida real estate transaction. In fact, I do not recall having any conversation with Mr. Schlick at all about any subject since he left Penn-Dixie in 1969. Moreover, I have no factual knowledge about the transaction referred to by Mr. Schlick, and certainly have no information whatever of the nature attributed to me by Mr. Schlick. Since I know nothing about the transaction, I, of course, never told Mr. Schlick or anyone else that it was done as a favor to anyone, or that I believed it was not profitable.

4. I have also read Mr. Schlick's testimony that Continental Steel extended longer credit terms to Hausman Corporation (then a subsidiary of Penn-Dixie) than it did to other customers while Mr. Schlick was associated with Penn-Dixie in 1968-69. Pages 48-49 of

the transcript of Mr. Schlick's deposition, which contain this testimony, are attached hereto as Exhibit "B".

5. This testimony is also incorrect. I was President of Hausman Corporation at that time and until June, 1972. Continental Steel, during the time I was president, never extended to Hausman Corporation any credit terms that were longer or different than those we received from other suppliers and are ordinarily prevalent in the steel industry. I have no knowledge that any such longer or different credit terms were extended by Continental Steel to Hausman Corporation after June of 1972.

Fred Hausman
FRED HAUSMAN

Sworn to before me this
30th day of September, 1975.

LYNN H. GRESSLEY
Notary Public – State of Ohio
My commission has no Expiration date
Section 147.03 R.C.

specific numbers?

A No. The only bank, he mentioned something with respect to Continental making certain deposits in Franklin or the use of the Continental Illinois bank.

Q Did he give you any documentation of those claims?

A No, he did not.

Q Both of your complaints, Mr. Schlick, refer to a Florida real estate transaction; is that correct?

A Yes.

Q Can you tell us any specific facts which you have to support your allegation that this transaction was designed solely for the benefit of Penn-Dixie as a way of repaying a favor to a friend? I think those are the allegations in your complaint.

A Yes. I had a phone conversation with a Fred Hausman.

Q Do you want to spell that for the reporter?

A Well, H-a-u-s- -- I don't know if it's m-a-n or two s's, m-a-n, who at the time had been involved in the Ohio operations. I can't think of the name of the subidiary, and who had also been delegated by Mr.

Castle to become involved in real estate. Now, Mr. Aranow -- Aranow or --

MR. ZIVYAK: Aranoff.

A Aranoff-- had been the recipient of many such what I will call improper favors.

Q Are you talking from your own knowledge now or is this what Mr. Hausman told you?

A I am talking, if you want to be specific I will be very specific.

Q I definitely want you to be.

A For example, when Penn-Dixie Leasing was formed as a subsidiary of Penn-Dixie Corporation, certain stock was sold to certain people at the incorporation, one of whom was Mr. Aranow. Then the stock, 10 per cent of the corporate stock of the leasing company was distributed to Penn-Dixie shareholders, which made a market for the Penn-Dixie Leasing Corporation. The stock went to 18, but began to fall, and while it was falling Mr. Castle arranged for Mr. Aranow to sell his stock to the Penn-Dixie pension trust at 18.

After objecting to the transaction with the pension trust, because the value was nowhere near that, he then had it taken out of the pension trust and repurchased by Penn-Dixie Cement Company and the stock

today is either nominal or of no value -- I don't know.

On other occasions, I believe there was a mortgage on a plant in Michigan granted whereby Mr. Aranow received certain favors for guaranteeing that mortgage or in some way participating in the mortgage.

Q Is this what Mr. Hausman told you, Mr. Schlick, or is this --

A No, this I know.

Q This took place --

A This I know of my own information.

Q This took place when you were with the company?

A The Penn-Dixie Leasing stock took place when I was with the company.

Q All right. Let's continue. Let's home in on this specific Florida transaction, if you will.

A All right. The Florida transaction with respect to the conversation with Mr. Hausman was that Mr. Aranow was having a cash and financial problem with respect to the Florida real estate and Mr. Castle arranged that Continental Steel would joint venture it with them.

Q And did Mr. Aranow give you any further specifics? I am sorry, did Mr. Hausman give you any further specifics of that transaction?

A He implied or he indicated that it was not a, in his estimation, a profitable or potentially profitable deal.

Q Do you have any facts which indicate that the land that you say was purchased was worth less than what Continental paid for it?

A When you say purchased, land, of course, is something that if it's in some state of potential development its value is only related to the potential profitability and based on the conversations I had, I felt the value placed on the land at the time it was put into the venture was not equal to the value that was paid for it.

Q And what facts do you have to support that feeling?

A Only conversations.

Q That is one conversation with Mr. Hausman?

(Witness and counsel confer.)

MR. CHERNO: I am going to object to this continual conferring with counsel on factual answers. I would like to get Mr. Schlick's answers. We will depose you late,

Q You knew about this reduction in dividend in 1969; did you not?

A I believe so, yes.

Q You knew about it in 1973 when you formulated your initial complaint; did you not?

A Yes.

Q Can you tell me why you didn't include it in your original complaint?

MR. ZIVYAK: Objection. Irrelevant.

MR. EINSTEIN: Are you directing him not to answer?

MR. ZIVYAK: Yes, I am directing him not to answer.

Q At that time you didn't think that was anything that anyone had done wrong; is that correct?

MR. ZIVYAK: Objection. Argumentative and irrelevant.

Q What specific facts do you have, Mr. Schlick, in support of your allegation that Continental Steel was caused to sell steel products to Penn-Dixie or its subsidiaries or affiliates on terms more favorable to Penn-Dixie than to non-affiliated companies?

A Continental Steel sold reinforcing bars to the

Hausman Company -- I believe that's the name, when I referred to Fred Hausman over there, which had a number of warehouses for the sale of that throughout the country, and to my knowledge there were longer credit terms extended through the inter-company process to Hausman than was general to other customers.

Q You say that is to your knowledge?

A That's right.

Q Can you tell us how you came by that knowledge?

A Well, I was involved in not only, in the Fred Hausman operations to some extent, and was aware of their purchases from Continental Steel during my tenure.

Q So your testimony is that this took place during your tenure?

A Yes. And I have no reason to believe it was --

Q But you have no facts whatever to support -

A No facts.

Q No facts to support that other than the claim that there were conditions or terms of any other nature that were different in the sales between Continental and Penn-Dixie than there were between Continental and non-affiliated companies?

Reply affidavit of Jeffrey L. Zivyak
of October, 1975, and exhibits thereto

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,	73 Civ. 1467 (C.M.M.)
Plaintiff,	
- against -	REPLY AFFIDAVIT
PENN-DIXIE CEMENT CORPORATION, et al.,	
Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JEFFREY L. ZIVYAK, being duly sworn, deposes and says:

1. I am a member of the firm of Berman and Zivyak, attorneys for the plaintiff in the captioned matter. This reply affidavit is submitted in further support of plaintiff's motion for class action treatment and in order to place certain documents referred to in the Reply Memorandum of Law into the record of this case.

2. (a) Annexed hereto as EXHIBIT A is a copy of the Minutes of a meeting of Continental's Board of Directors, November 19, 1970.

(b) Annexed hereto as EXHIBIT B is Minutes of Continental's Board of Directors of July 27, 1971.

(c) Annexed hereto as EXHIBIT C is a copy of a memo from Loren E. Souers to S.L. Miller dated August, 1970.

(d) Annexed hereto as EXHIBIT D is the affidavit of Gene C. Brewer.

3. Plaintiff's argument is fully set forth in his original moving papers and the Reply Memorandum submitted simultaneously herewith.

Sworn to before me this

day of October, 1973.

JEFFREY L. ZIVIAK

MINUTES OF REGULAR MEETING OF THE BOARD OF DIRECTORS OF CONTINENTAL STEEL CORPORATION

Held at the offices of the Corporation, Kokomo, Indiana, November 19, 1970, at 2:00 p.m., E.S.T., with the following present: Messrs. Jerome Castle, Omar J. Glantz, James E. Hardy, Arthur L. Miller, Loren E. Souers, John J. Weldon and Howard C. Williams. Absent: Messrs. Harvey Kushner, Robert W. Lefferts and Alfonso J. Marcelle.

Mr. Castle presided and Mr. Jack H. Hite, Secretary, recorded the minutes.

The minutes of the Board of Directors' meeting held September 24, 1970, were approved as distributed.

The resignation of Mr. Patrick H. Hoy on October 7, 1970, was noted with regret. On motion duly made and seconded, Mr. Harry Hayes, Attorney-at-Law, and general counsel for four subsidiaries of Penn-Dixie Cement Corporation, was unanimously elected to the Board of Directors to fill the vacancy created by Mr. Hoy's resignation, the term of office to run until the next meeting of shareholders in April, 1971.

Mr. Miller reported that two production records were set during the month of October - 41,826 N.T. of ingots and 41,750 N.T. of billets.

Mr. Williams reported on sales.

The statement of financial position as of October 31, 1970, and the income statements for the period ended October 31, 1970, and for the year to date ended October 31, 1970, were presented by Mr. Hardy and discussed.

Mr. Hardy stated the $1,135,000 loan to Penn-Dixie Cement Corporation, advanced on March 1, 1970, and secured on limestone production payments, will probably be repaid by November 30, 1970, and that Penn-Dixie has requested a $1,500,000 loan on the same type of security basis. There was discussion, and it was the consensus that such a loan should have adequate security, the rate of return should be at least as high as could be obtained from outside borrowers, and that waiver must be obtained from our term loan lenders. Mr. Castle indicated that he was thinking of a rate of 2% above prime. After discussion, on motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED, That a loan of approximately $1,500,000 be granted to Penn-Dixie Cement Corporation, such loan to be secured on satisfactory limestone production payments and subject to the provisions of the term loan

agreements of Penn-Dixie Cement Corporation and Continental Steel Corporation, the rate of return to be at least commensurate with rates available to other comparable borrowers, and the term to be no longer than one year.

Mr. Castle stated that, at the present time, Continental Steel Corporation is not represented on the Board of Directors of Phoenix Manufacturing Company because of resignations of the Directors. Mr. Miller explained that, upon Mr. Castle's request, the former Board members, Messrs. Williams, Miller and Hite, had resigned, and that the remaining Phoenix Board members had declined to elect the designated replacements at that meeting. Mr. Castle then asked that a resolution be adopted requesting the remaining Phoenix Board members to elect Messrs. Jerome Castle, Robert W. Lefferts and Paul Windels, Jr., as Directors to represent Continental Steel Corporation. On motion duly made and seconded, the following resolution was adopted:

WHEREAS there exist three vacancies on the Board of Directors of Phoenix Manufacturing Company, created by the resignations of the members representing Continental Steel Corporation;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Continental Steel Corporation, That the three present Directors of Phoenix Manufacturing Company who represent Trans Union Corporation be hereby requested to elect the following persons to fill said vacancies and to represent the interests of Continental Steel Corporation; namely, Jerome Castle, Robert W. Lefferts, and Paul Windels, Jr.

Mr. Weldon abstained from voting on this resolution.

Declaration of the December, 1970, dividend was next considered. Mr. Castle suggested that, in light of continued decline in earnings, the dividend should be reduced. Mr. Castle stated that his Directors had been polled, and a dividend of 20 cents per share was recommended. There followed discussion, and it was the consensus that any action taken in lowering the dividend is a reflection of lower 1970 earnings, and is not to be considered a policy intended to continue this dividend rate indefinitely. On motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That a quarterly dividend of twenty cents a share be and the same is hereby declared and ordered paid on common shares of Continental Steel Corporation, payable December 15, 1970, to holders of record December 1, 1970.

At this time, Mr. Hite left the meeting and phoned the dividend information to the Chicago office of Dow, Jones & Company for immediate release.

There followed lengthy discussions relative to (1) deferred compensation payments for 1970 to management and key position personnel, and (2) change in membership of the Executive Committee. No decisions were made, but it was agreed that an early Board meeting will be held to make decisions on both matters.

There being no further business, the meeting adjourned.

_____

Chairman

_____

Secretary

MINUTES OF MEETING OF BOARD OF DIRECTORS OF CONTINENTAL STEEL CORPORATION

A Special Meeting of the Board of Directors was held at the offices of Penn-Dixie Cement Corporation, 1345 Avenue of the Americas, City and State of New York, on Tuesday, July 27, 1971 at 9:30 a. m.

Present - Jerome Castle
O. J. Glantz
Meyer L. Kamin
Harvey Kushner
R. W. Lefferts
James F. Morrill
John J. Weldon

constituting a quorum of the Board.

Absent - George C. Green
Harry Hayes
Alfonso J. Marcelle
Loren E. Souers

Mr. James F. Morrill presided and Mr. R. W. Lefferts acted as recording secretary.

A draft of the minutes of the Directors' meeting held on June 10, 1971 had been distributed to all members of the Board and, there being no corrections, the draft was approved as the minutes of the meeting.

The President then reviewed in some detail earnings and operations for the first six months of 1971 which showed that earnings for the year to date of $. 82 per share were almost double those of the previous year which amounted to $. 46 per share for the same period. In response to a question, Mr. Morrill said that he did not believe there was much strike hedge buying of the corporations products in the first six months. Mr. Morrill

recommended that Price Waterhouse & Co. be employed as auditors and , on motion duly made and seconded, it was

RESOLVED, that Price Waterhouse & Co. be employed to audit Continental Steel Corporation books for the year 1971, and thereafter.

Mr. Morrill recommended that an Assistant Secretary be appointed and upon motion duly made and seconded, it was

RESOLVED, that William P. Young be, and he hereby is, appointed Assistant Secretary of the Corporation.

Mr. Morrill recommended that the company continue its policy of buying its shares of stock in the open market from time to time and upon motion duly made and seconded, it was

RESOLVED, that 12,910 shares of Continental Steel Corporation common stock be repurchased at the market price.

Mr. Morrill recommended that five employees be granted employment contracts. Whereupon, on motion duly made and seconded, it was

RESOLVED, that the President be, and hereby is, authorized to enter into an employment contract with James E. Jacobsen, Vice President and Treasurer, in the amount of $24,000 per year for a period of five years beginning July 1, 1971, an increase from $21,000 per year.

FURTHER RESOLVED, that the President be and hereby is authorized to enter into an employment contract with Joseph H. McCormack, Vice President - Personnel Administration, at his present salary, namely, $25,000 per year, for a period of three years beginning August 1, 1971.

FURTHER RESOLVED, (John J. Weldon voting no) that the President be and hereby is authorized to enter into an employment contract with Jack Gosselin, President of Phoenix Manufacturing, in the amount of $42,499.68 per year for a period of ten years beginning August 1, 1971.

FURTHER RESOLVED, (James F. Morrill abstaining from voting) that the Chairman be and hereby is authorized to enter into an employment contract with James F. Morrill, President, in the amount of $60,000 per year for a period of three years beginning July 1, 1971.

FURTHER RESOLVED, (Jerome Castle abstaining from voting and John J. Weldon voting no) that the President be and hereby is authorized to enter into an employment contract with Jerome Castle, Chairman, in the amount of $50,000 per year for a period of ten years beginning July 1, 1971.

Declaration of a dividend was considered. After discussion, on motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, that a quarterly dividend of ten cents a share be and the same is hereby declared and ordered paid on common shares of Continental Steel Corporation, payable September 15, 1971, to holders of record August 25, 1971.

Mr. Morrill accepted with regret and appreciation for his efforts the resignation of John J. Weldon from the Pension Trust Investment Council and on motion duly made and seconded R. W. Lefferts was elected to the vacancy thereby created.

There being no further business, on motion, the meeting adjourned.

_____

Recording Secretary

BLACK, MCCUSKEY, SOUERS & ARBAUGH

August , 1970

MEMO FROM: Loren E. Souers

TO: A. L. Miller

RE: Procedures and Problems involved in possible merger of Continental Steel Corporation and Penn-Dixie Cement Corporation

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The question has been raised as to feasibility of a merger between Continental Steel Corporation, an Indiana corporation, and Penn-Dixie Cement Corporation, a Delaware corporation. Without having had the opportunity to give full consideration and study to the various problems that would arise in such a merger, several principal questions of procedure and attendant problems come to mind and are outlined and discussed as follows:

1. Required Vote Necessary

Under Section 25-231, Indiana Revised Statutes, corporations for profit may merge by the adoption of an agreement of merger by a majority vote of the directors of both corporations, which, in addition to approving a joint agreement of merger, contains certain basic terms and statements, and which also provides for adoption of the agreement of merger by a vote of the shareholders of each corporation, at a meeting provided for by such resolution. All shareholders entitled to vote upon such issue shall receive notice and full particulars concerning the merger, and, with respect to the Indiana corporation, a majority vote of shareholders is required. However, where the merger is with a foreign corporation, certain other provisions outlined in Section 25-314(a) must be met and, in addition thereto, two other steps must be fulfilled:

(a) All dissenting shareholders, i.e., shareholders who do not vote in favor of the merger, must be given full rights provided by law, which, under Indiana law, means that within 30 days after authorization of the merger they may object in writing and demand payment of the value of their shares, at which time the corporation must then attempt to reach agreement as to the value of the shares as of the date of authorization and make payment in cash. If such agreement is not reached, then within 90 days thereafter either the corporation or the shareholders may petition the circuit or superior court of the county (in this case, Howard County) for a determination of the value of shares and payment of such value shall be made within 60 days after the entry of a judgment or order finding such value.

If one were to assume that as many as 20% or 25% of all shares of Continental were to object to the merger and follow the above procedure, the payments to be made at the current market value would be at least $4,000,000 to $5,000,000. However, since the court is required to follow the procedures for appraisal used in eminent domain proceedings, it is logical to assume that the book value of shares (currently about $40 per share) would become a major factor in the jury determination of the value of shares, and that the per-share value recuired to be paid might well be somewhere between $30 and $35 per share, or from $7,000,000 to $9,000,000 upon the assumptions made. In any event, under the current circumstances, it would appear that a very substantial cash payment could be required.

(b) Not less than 30 days after adoption of the agreement of merger by the shareholders of both corporations, the agreement of merger shall again be considered by the Board of Directors of each corporation, at which time the same must again be approved by a majority vote of the members of such Boards and the officers authorized to execute the same and see to the filing thereof.

Since the other merging corporation is not an Indiana corporation, the law of the state of its incorporation becomes the law affecting its merger. Thus, since Penn-Dixie is a Delaware corporation, the approval of shareholders must be by 2/3 of all shares entitled to vote, rather than a mere majority, as in Indiana, and dissenting shareholders must also be afforded the right to be paid the value of their shares on the date of recording of the agreement of merger. The directors of both corporations may initially adopt an agreement of merger by a majority vote, but no such reapproval by the directors is required in Delaware as in Indiana. It must, of course, be recognized that, at the current market price of Penn-Dixie shares, and with its current financial problems, many shareholders might choose to take advantage of this opportunity to secure payment for their shares at a price considerably above the market price. If so, Penn-Dixie itself would also be required to pay a very substantial amount in cash to dissenting shareholders. It is, of course, impossible to estimate the extent of such payments, except in rather general terms. However, it would appear that, from a tax standpoint, the shareholders would realize no capital gain from such payments, so long as they did not exceed the original price of their shares, that is, the amount paid as fair value at this time, even though above market value, would not constitute a taxable gain, in our opinion.

2. Any merger agreement would have to fix a ratio of exchange of shares of the surviving corporation for shares of the merged corporation. It is assumed, in this discussion, that Penn-Dixie would be the surviving corporation and Continental the merged corporation, though the actual direction of exchange makes little difference for these purposes. Any such ratio would be highly suspect under the circumstances which exist in this instance, since Penn-Dixie's management controls both corporations. Thus, the exchange ratio would have to be one arrived at with the greatest care and study, so as to make certain that it was not only one which would appear fair to shareholders of both corporations, but also one which could be successfully defended against shareholders' attacks in court. Such attacks could well be expected, because of the very substantial minority of Continental shares publicly held, as opposed to the slight majority of Continental shares held by Penn-Dixie. It would bee highly unrealistic to assume that the recent low level of profits, the halving of dividends, the changes in management, both directors and officers, and other factors associated in the public mind with control of Continental by Penn-Dixie, would not be likely to produce action by at least a number of disgruntled shareholders, which could delay or even completely stop such a merger. Moreover, an exchange ratio of Penn-Dixie and Continental shares which appeared clearly fair would be less likely to produce dissenting shareholders who would both vote against the merger and demand cash payment of the fair value of their shares. Thus, it would be imperative that careful consideration be given to the working out of an exchange ratio.

There are other factors involved which have not been discussed here, but it can readily be seen from those mentioned above that a merger is neither something which can be lightly or quickly entered into, nor which can be assumed to be accepted readily by large numbers of shareholders, unless clearly for their benefit. Moreover, in times of financial stress for either the corporation or for the business community generally, and in times when the level of prices on the stock market is unusually low, mergers of this type become less and less likely to secure approval of a sufficiently large number of shareholders to make them practicable, since few corporations are in a position to make substantial cash payments to dissenting shareholders.

L.E.S.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

-against-

PENN-DIXIE CEMENT CORPORATION, et al.,

Defendants.

73 Civ. 1467 (C.M.M.)

AFFIDAVIT

STATE OF ~~NEW YORK~~ OREGON)
: ss.:
COUNTY OF)

GENE C. BREWER, being duly sworn, deposes and says:

1. I was the President of U.S. Plywood-Champion Papers, Inc. from the date of the merger of U.S. Plywood and Champion Papers on March 1, 1967 until I left the company in 1969. Previously thereto, I was the President of U.S. Plywood Corporation.

2. I have known John Schlick for approximately twenty-five years.

3. Mr. Schlick was an executive of U.S. Plywood during the time I was the President and he was the Executive Vice-President of U.S. Plywood-Champion Papers, Inc. to the date of his resignation in 1968. Mr. Schlick was part of top management and was quite instrumental in working out all of the details of the

merger of U. S. Plywood and Champion Papers.

4. Mr. Schlick resigned for his own personal reasons in 1968 and his resignation was accepted by the company. Upon his leaving, Mr. Schlick received the balance of the remuneration due under his five year employment contract, the balance of the shares of stock credited to him under the restrictive stock plan and commenced receiving a pension starting at the end of the five years of the contract.

5. Under no circumstances can it be stated that Mr. Schlick had been fired from the corporation.

Sworn to before me this
20 day of Oct, 1975.

Gene C. Brewer
GENE C. BREWER

Supplemental Affidavit of John Schlick of October 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,	73 Civ. 1467 C.M.M.
Plaintiff,	SUPPLEMENTAL AFFIDAVIT
- against -	
PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL H. ESCHEN, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS, JAMES F. MORRILL,	
Defendants.	

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JOHN SCHLICK, being duly sworn, deposes and says:

1. I am the plaintiff in the above matter. This supplemental affidavit is submitted in further support of my motion made pursuant to Rule 23 of the Federal Rules of Civil Procedure for a determination of class action status in my favor. With the filing of the reply papers submitted on my behalf some days ago, I assumed that this long pending motion was now ripe for decision. However, contrary to the direction of the Hon. Sol Schreiber, the defendants have now filed "a rebuttal memorandum." At first reading, we were of a mind to let matters stand and not file any additional papers, however, it now appears necessary to set the record straight. It is the contention of the defendants that I have not rebutted certain charges made against me. It is not that I did not rebut those charges, but rather that I chose not to dignify those scurrilous claims with an answer.

2. With respect that I "fabricated wholly ficitious conversations," I submit that this is simply untrue. I did not lie under oath and I reaffirm my recollections of those conversations. May I point out that Mr. Hausman, who challenges my recollection, is still associated with the defendants and therefore, his recollection is certainly suspect.

3. The defendants attempt to obscure certain issues in this case by claiming that I participated in steps which eventually led to the Penn-Dixie - Continental merger. I had no hand whatsoever in the improper and unlawful conduct of the defendants, which postdated my tenure with Penn-Dixie. Indeed, if the defendants had not, through market manipulation, accounting legerdemain and other unlawful practices deprived the Continental minority of what was lawfully theirs, this lawsuit would not be pending. I was and continue to be opposed to improper tactics by the defendants to merge out the Continental minority unfairly. In a nutshell, this summarizes the problems of defendants' papers and their arguments against the motion to designate me as a class representative. The complaint in this action challenges the tactics employed by defendants to overreach the Continental minority in achieving the merger. Hence, my ability to represent the class can not be tainted merely because I believed that Continental was a good investment for Penn-Dixie.

4. Next, as to the claim that there was something venal about accepting money for consulting services from Penn-Dixie, it should be noted that I had started a project and although I chose to leave Penn-Dixie, I continued to work on that project out of a sense of loyalty to the company's

shareholders. I believed that I was the one person most familiar with the transaction and that my presence in the transaction was necessary so that the transaction could be consummated. Apparently, the management of Penn-Dixie agreed since they asked me to stay on as a consultant. It should be noted in passing, that there is nothing wrong in being paid for one's work. With respect to the dividend issue, I submit that this question has been resolved completely in our reply papers and I need not trouble the court on that point any further. The same can be said with respect to the issue of my leaving U.S. Plywood. I rest on the affidavit of Gene C. Brewer previously submitted to this court.

5. In summary then, it can be seen that the defendants have set up straw man after straw man, but have failed utterly to demonstrate that my representation of the class would not be anything, but vigorous and effective. As many courts have noted, it is the irony of Rule 23 practice that defendants will urge that the prospective class representative will not try hard enough. I submit that the contrary is true. All procedural smoke screens must be brushed aside so that an inquiry into the merits of this case can finally begin. Certainly, from my action to date, the record proves that I vigorously represent the class. It is this representation and the exposure of the defendants' conduct that frightens the defendants and nothing else. The alleged "conflict of interest" simply does not exist and has a hollow ring.

JOHN SCHLICK

Sworn to before me this
day of 1975.

Affidavit of Gene C. Brewer
of November 7, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

-against-

PENN-DIXIE CEMENT CORPORATION, et al.,

Defendants.

73 Civ. 1467 (C.M.M.)

AFFIDAVIT

STATE OF ARIZONA)
: ss.:
COUNTY OF Maricopa)

GENE C. BREWER, being duly sworn, deposes and says:

1. I was the President of U.S. Plywood-Champion Papers, Inc. from the date of the merger of U.S. Plywood and Champion Papers on March 1, 1967 until I left the company in 1969. Previously thereto, I was the President of U.S. Plywood Corporation.

2. I have known John Schlick for approximately twenty-five years.

3. Mr. Schlick was an executive of U.S. Plywood during the time I was the President and he was the Executive Vice-President of U.S. Plywood-Champion Papers, Inc. to the date of his resignation in 1968. Mr. Schlick was part of top management and was quite instrumental in working out all of the details of the

merger of U. S. Plywood and Champion Papers.

4. Mr. Schlick resigned for his own personal reasons in 1968 and his resignation was accepted by the company. Upon his leaving, Mr. Schlick received the balance of the remuneration due under his five year employment contract, the balance of the shares of stock credited to him under the restrictive stock plan and commenced receiving a pension starting at the end of the five years of the contract.

5. Under no circumstances can it be stated that Mr. Schlick had been fired from the corporation.

Sworn to before me this
7th day of November 1975.

Christine Baker

My Commission Expires Feb. 20, 1979

Gene C. Brewer

GENE C. BREWER

Magistrate's Report and Recommendation,
dated June 16, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

-against-

73 Civ. 1467 (CMM)

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL H. ESCHEN OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCHELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS, JAMES F. MORRILL,

MAGISTRATE'S REPORT and RECOMMENDATION

Defendants.

----------X

By order of the Honorable Charles M. Metzner, this action was referred to the undersigned for all pre-trial purposes. There are four motions presently awaiting disposition. Plaintiff Schlick has moved to file an amended complaint, for class action certification and for further documentary production. Defendant Penn-Dixie Cement Corporation ("Penn-Dixie") has moved to compel Schlick to answer deposition questions relating to his financial ability to give the requisite notice to class members should the action proceed as a class action, and also seeks disclosure of the terms of any fee arrangement which may exist between plaintiff and his counsel concerning the costs of notice or other expenses in this action.

After consideration of the papers submitted by the parties and extensive oral argument, it is recommended that Schlick's motion for leave to file an amended complaint and for class action certification be granted. It is also recommended that Penn-Dixie's motion concerning plaintiff's financial ability to support this class action be denied as moot.

SCHLICK'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Schlick has moved, pursuant to Federal Rule of Civil Procedure 15(a), for leave to file a first amended complaint. By this motion Schlick seeks to overcome certain of the objections which defendants have heretofore raised to plaintiff's requests for the production of documents. Defendants have resisted a number of plaintiff's document requests on the theory that the requests did not fall within the four corners of the complaint as it was originally framed and to that extent are irrelevant to this action. By incorporating a more detailed account of defendants' alleged wrongdoing into the proposed amended complaint, plaintiff seeks to overcome this objection and so compel defendants to produce the contested documents.

Rule 15(a) states that leave of court must be obtained in order to file an amended pleading once a responsive pleading has been served, but states further that "leave of court shall be freely given when justice so requires." It has been held that a motion to file an amended pleading should be granted when it appears that the proponent of the amendment is not using the motion to harass the opponent or delay the trial, and when it appears further that the party opposing the motion will not be unduly prejudiced by the amendment. Foman v. Davis, 371 U.S. 178, 182 (1962); Glazer Steel Corp. v. Yawata Iron & Steel Co., 56 F.R.D. 75, 77 (S.D.N.Y. 1972).

No showing of bad faith or the use of dilatory tactics has been made in this action, nor have defendants demonstrated that they would be prejudiced by plaintiff's proposed amendment. In addition, it should be noted that the proposed amended complaint does not omit those allegations which were relied on by the Court of Appeals in upholding the sufficiency of the original complaint. Schlick v.

Penn-Dixie Cement Corp., 507 F.2d 374 (2d Cir. 1974), cert. denied, 421 U.S. 976 (1975).

Since plaintiff's proposed first amended complaint will not cause any undue hardship or prejudice on the defendants and will also expedite discovery, it is recommended that plaintiff's motion for leave to file an amended complaint be granted.

SCHLICK'S CLASS ACTION MOTION

Schlick has moved, pursuant to Federal Rule of Civil Procedure 23(c)(1), for an order declaring that this action be maintained as a class action. Schlick has charged the defendants with assorted violations of the securities laws and with breaches of fiduciary duty in connection with the June 1973 merger of Continental Steel Corporation ("Continental") and Penn-Dixie. By the present motion Schlick seeks to represent a class composed of all shareholders of Continental Steel Corporation (exclusive of the defendants) who held their shares on the effective date of merger between Continental and Penn-Dixie Cement Corporation and whose interest in Continental was thereby merged out of existence.

Before an action may be certified as a class action the court must be satisfied that all of the requirements of Rule 23 are met. The class sought to be represented must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There must exist questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2). Plaintiff's claim must be typical of the claims of the class. Fed. R. Civ. P. 23(a)(3), and plaintiff must demonstrate that he will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In addition to satisfying these four requirements of Rule 23(a), the potential class must satisfy the requirements of one of the three subsections of Rule 23(b). Since Schlick seeks to bring this

action under Rule 23(b)(3), he must show that questions of law or fact common to the class predominate over questions affecting only individual members, and that the class action is a superior method for the adjudication of this controversy.

The requirements of Rule 23 and their application to the present action will be taken up in order, except as regards the "adequacy" requirement of Rule 23(a)(4). It is only this requirement which has rasied any serious question as to the propriety of maintaining this action as a class action. Since, in the context of the present case, the "adequacy" requirement demands more elaborate treatment than do the other requirements of Rule 23, that requirement will be taken up last.

NUMEROSITY

The proposed class is composed of the "many hundreds" of persons who held shares of Continental on the effective date of the merger between Continental and Penn-Dixie. A class composed of "many hundreds" of persons is sufficiently numerous to make joinder of all members inpracticable in terms of Rule 23(a)(1). See Green v. Wolf Corp., 406 F.2d 291 (2d Cir. 1968), cert. denied, 395 U.S. 977 (1969) (2,000 members sufficiently numerous); Pearlman v. Gennaro, 17 F. R. Serv. 2d 666, 671 (S.D.N.Y. 1973) (400 members sufficiently numerous); Blank v. Sullivan & Cromwell, 20 F. R. Serv. 2d 855, 856 (S.D.N.Y. 1975) (70 members sufficiently numerous).

COMMONALITY

The "commonality" requirement of Rule 23(a)(2) is satisfied since the claim of each class member is based on the legality of a single series of actions by the defendants in acquiring control over the management of Continental and effectuating the merger of Continental and Penn-Dixie to the detriment of the interests of Continental shareholders.

TYPICALITY

Schlick's claim is typical of the claims of the class members who held Continental shares on the effective date of the merger between Continental and Penn-Dixie. Schlick held 2,000 shares of Continental on the effective date of the merger and now seeks damages for the devaluation of those shares due to defendants' allegedly unlawful conduct.

PREDOMINANCE OF COMMON QUESTIONS

The common questions of law or fact presented for determination in this action relates to the legality of the defendants' conduct in effectuating the Continental-Penn-Dixie merger, which conduct includes the distribution of the allegedly misleading proxy statement to Continental shareholders in March 1973. It is true that questions affecting only individual members will also be presented for the court's determination. Those individual questions may relate to whether the individual class members relied on the misleading proxy statement in approving the merger and, if so, to what extent they suffered damages thereby. Rule 23(b)(3) does not, however, demand that only common issues be presented for class treatment. Questions affecting only individual members may be presented as long as they do not "overwhelm" the questions affecting the class and so "render the class action form valueless." Milberg v. Lawrence Cedarhust Federal Savings & Loan Ass'n., 20 F. R. Serv. 2d 1359, 1362 (E.D.N.Y. 1975)(footnotes omited).

In the present case the individual issues presented do not predominate over issues affecting the class so as to undermine the utility of the class action device. See e.g., Green v. Wolf Corp., 406 F.2d 291, 301 (2d Cir. 1968), cert. denied, 395 U.S. 977 (1969); Dolgow v. Anderson, 43 F.R.D. 472, 488 (E.D.N.Y. 1968).

SUPERIORITY

Before an action may be certified as a class action under Rule 23(b)(3) the court must find that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." The matters pertinent to both the "superiority" and "predominance of common questions" requirements of Rule 23(b)(3) include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undersirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of the class action."

It has been recognized that the class action device serves an important function in eliminating the possibility of "repetitious litigation" while also providing the small claimant with " a method for obtaining redress for claims which would otherwise be too small to warrant individual litigation." Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 560 (2d Cir. 1968) (Eisen II). The maintainance of this action as a class action may permit the class of Continental shareholders to gain a redress for their claims which, as a practical matter, they will be unable to attain if they are forced to prosecute their claims in individual actions. In addition, the consolidation of the claims of the class members into a single class action is desirable in several respects. This consolidation of claims should reduce the defendants' burden of defending against hundreds or thousands of individual actions, while also reducing the danger of inconsistent adjudications presented by the maintainance of many actions in different forums. Finally, the court is empowered to deal with any difficulties in the management of this action as a class action under the provisions

of Rule 23 (d). In view of these considerations, a class action is superior to other available methods for adjudication of this controversy.

ADEQUACY

It is the requirement that the class representative fairly and adequately protect the interests of the class which raises the most serious question as to the propriety of maintaining this action as a class action. Defendants contend that Schlick's conduct in 1969 as a director of Continental Steel Corporation renders him unfit to represent a class of Continental shareholders today. The pleadings, affidavits and exhibits submitted in this action survey Schlick's prior business association with both Penn-Dixie and Continental in 1968 and 1969. A brief outline of Schlick's service at Penn-Dixie and Continental will clarify defendants' contention.

In September 1968 John Schlick left his position as Executive Vice-President of U.S. Plywood-Champion Paper Corporation to become Executive Vice-President for Finances and Administration at Penn-Dixie. Prior to Schlick's appointment at Penn-Dixie, the latter held 38% of all outstanding Continental shares. It was during Schlick's tenure that Penn-Dixie increased its control over Continental by acquiring in excess of 50% of the outstanding Continental shares as of June 1969.

Schlick's status as a director of Continental had its origins in a meeting of the Board of Directors of Continental in January 1969. At this meeting Schlick was nominated for a three year term as a director of Continental. Schlick was named to the Continental Board on April 15, 1969, thus becoming one of six Penn-Dixie directors to be named to the Continental Board.

It is a single act at this April 15, 1969 meeting of the Continental Board that defendants rely on in attacking Schlick's status as a proper class representative. At this, his first meeting as

a director of Continental, Schlick voted, as part of a unanimous resolution, to continue in effect the 25¢ per share Continental dividend which Continental had first declared in January 1969. This 25¢ divided was a significant departure from the 80¢ dividend Continental had declared through 1968.

Schlick resigned from the directorates of both Penn-Dixie and Continental in August 1969. In November 1970 the Continental dividend was decreased from 25¢ to 20¢, at which level it remained until, in March 1973, the directorates of Penn-Dixie and Continental submitted a joint proxy statement to the shareholder of Continental in anticipation of the merger of Continental into Penn-Dixie. Under the terms of the proposed merger agreement, Continental shareholders were to be offered one and one-half shares of Penn-Dixie stock and one warrant for each share of Continental stock.

In June 1973 the merger was effectuated. Schlick, who had purchased 2,000 shares of Continental stock and 1,000 shares of Penn-Dixie stock in 1969, was among the Continental shareholders to accept the exchange offer. Thus, Schlick no longer holds any Continental shares. Within six months of the merger, Schlick had also disposed of his Penn-Dixie shares. He now holds only the Penn-Dixie warrants.

The federal claims presented by both the original and proposed amended complaints allege violations of the proxy solicitation and anti-fraud provisions of the Securities Exchange Act of 1934. The proxy solicitation of March 1973 follows Schlick's service at Penn-Dixie and Continental by almost four years and defendants make no claims that Schlick played a role in the allegedly improper proxy solicitation. In addition, no showing has yet been been made that Schlick was an active participant in any of the allegations of wrongdoing which the Court of Appeals relied on in sustaining plaintiff's Rule 10b-5 claims.

Schlick v. Penn-Dixie Cement Corp., 507 F.2d 374, 378-79 (2d Cir 1974), cert. denied, 421 U.S. 976 (1975). Both the original and proposed amended complaints do, however, allege that defendants engaged in a course of conduct to depress the price of Continental shares to the detriment of Continental shareholders. Since Schlick voted at the April 15, 1969 meeting of the Continental Board of Directors to continue in effect the "depressed" dividend first declared three months earlier, defendants argue that Schlick himself was a party to the scheme to depress the price of Continental stock. Defendants would have the court conclude that since, at the trial, Schlick may be held liable to the class of Continental shareholders for one of the unlawful acts alleged in the complaint, namely, the scheme to depress the price of Continental stock, he is disqualified from representing the class of Continental shareholders in this action. This argument is not persuasive. In the first place, it is far from certain at this stage of the case that Schlick will be held liable to the class for any activities in relation to the alleged scheme to depress the price of Continental shares. Insofar as this scheme is concerned, it would appear that the major act in the effectuation of the alleged scheme was the resolution by the Continental Board in January 1969 which lowered the Continental dividend from 80¢ to 25¢. Schlick was not a member of the Continental Board of Directors in January 1969 and no showing has been made that Schlick played any role in that drastic reduction of the Continental dividend.

Defendants emphasize that at the April 15, 1969 meeting of the Continental Board, Schlick voted to continue in effect the "depressed" 25¢ dividend even though he knew that a higher dividend ought to have been declared. (Transcript of Schlick's Deposition, p. 47). It is Schlick's contention, however, that his vote at the April 15, 1969

meeting was not motivated by any antipathy toward the Continental shareholders, but rather was prompted by pressure exerted by defendant Jerome Castle to insure that all resolutions of the Continental Board were unanimous. Schlick claims that it was such conduct on the part of Castle and others which caused his speedy withdrawal from the directorates of both Penn-Dixie and Continental and furnished him with the requisite personal interest to bring this suit. (Transcript of Schlick's Deposition, pp. 46-47).

Whether or not Schlick's vote at the April 15, 1969 meeting of the Continental Board is sufficient to render him liable to the class of Continental shareholders is a matter which should await trial. At this stage of the case defendants' argument, while not frivolous, is nonetheless based on speculation and the mere possibility that at trial Schlick's conduct as a director of Continental may render him liable to the class he is representing.

The potential liability of the proposed class representative to the class he seeks to represent is not an automatic bar to the maintainance of the class action. As long as the requirements of Rule 23 are met, the action may proceed as a class action. The leading case in support of this proposition is Mersay v. First Republic Corp. of America, 43 F.R.D. 465 (S.D.N.Y. 1968). In Mersay the court permitted an "insider" to a securities fraud to represent a class of shareholders even though his "insider" status and prior business association with the defendants might serve to deny his individual recovery at trial. Upon finding that Mersay could be trusted to persue the action with the requisite vigor, the action was permitted to proceed as a class action. See also Lamb v. United Security Life Co., 59 F.R.D. 25, 30 (S.D. Iowa 1972); Vernon J. Rockler & Co. v. Graphic Enterprises, Inc., 52 F.R.D. 335, 341-42 (D. Minn. 1971).

It has been held that the "adequacy" requirement of Rule 23(a)(4) is satisfied "if plaintiffs' counsel is experienced and will vigorously prosecute the action, and if plaintiffs have no interests in conflict with other members of the class." Federman v. Empire Fire & Marine Insurance Co., 19 F.R. Serv. 2d 480, 483 (S.D.N.Y. 1974). See also Mersay v. First Republic Corp. of America, supra at 469-70; Dolgow v. Anderson, 43 F.R.D. 472, 494 (E.D.N.Y. 1968). In the present case Schlick's counsel is experienced in the field of class action litigation and can be expected to pursue this action with the necessary vigor. In addition, there are no present conflicts of interest between Schlick and the class which will prevent Schlick from fairly and adequately representing the class. Should such a conflict of interest appear at any point in the litigation, the court is empowered, pursuant to Rule 23(c)(1), to alter or amend the order granting class action certification. Such a procedure is clearly preferable to striking class allegations at the outset, when the alleged conflict between plaintiff and the class is speculative at best. Federman v. Empire Fire & Marine Insurance Co., supra at 483.

Since Schlick has satisfied all of the requirements of Rule 23, it is recommended that his motion for class action certification be granted.

SCHLICK'S MOTION TO COMPEL DOCUMENT PRODUCTION

Schlick has served on Penn-Dixie requests to produce twenty-nine categories of documents. Penn-Dixie has raised several objections to Schlick's production requests. One objection, as has already been noted, is that the document requests do not fall within the four corners of the original complaint and so lack relevance to this action. Schlick has now moved, pursuant to Federal Rule of Civil Procedure 37(a), for an order compelling Penn-Dixie to produce the contested documents.

As was indicated in the discussion of Schlick's Rule 15 motion, this dispute over documents requested by Schlick and not supplied by Penn-Dixie may be largely resolved if Schlick is granted leave to file the proposed amended complaint. Even if Schlick's Rule 15 motion is is granted, however, specific objections as to individual documents will still remain for the court's determination. Since counsel have not yet had the opportunity to present their full argument relating to each disputed document, no recommendation on Schlick's Rule 37 motion will be made at this time. A conference to resolve plaintiff's Rule 37 motion as well as all other outstanding discovery matters will be set before the undersigned immediately after the court acts on this report and recommendation.

PENN-DIXIE'S MOTION TO COMPEL SCHLICK
TO ANSWER THE DISPUTED DEPOSITION QUESTIONS

At Penn-Dixie's pre-trial examination of Schlick in September, 1975, Schlick was advised by counsel not to answer questions relating to his financial ability to give the requisite notice to class members should the action proceed as a class action. Schlick was further advised by counsel not to respond to inquiries as to whether counsel had advanced or was expected to advance to Schlick the cost of notice or other expenses in this action. Penn-Dixie thereupon moved, pursuant to Fed. R. Civ. P. 37(a), for an order compelling Schlick to answer the disputed questions.

Both sides have submitted papers on the issue of whether Penn-Dixie's lines of inquiry are within the scope of discovery permitted under the Federal Rules of Civil Procedure. This issue has been rendered moot, however, by virtue of an affidavit Schlick filed with the court on September 30, 1975. This affidavit, submitted in response to the once-disputed questions, reveals that Schlick is willing to pay for the cost

of notice should this action proceed as a class action, and reveals further that he will bear the ultimate liability for any litigation expenses advanced by his counsel.

Since this affidavit contains satisfactory answers to the once-disputed questions, it is recommended that Penn-Dixie's motion be denied as moot.

RECOMMENDATIONS

For the foregoing reasons, it is Recommended that Schlick's motion for leave to file an amended complaint and for class action certification be granted, and Penn-Dixie's motion to compel Schlick to respond to the once-disputed deposition question be denied.

/s/ Sol Schreiber
SOL SCHREIBER
U.S. MAGISTRATE

Dated: New York, New York
June 16, 1976

Decision and Order of Judge Metzner,
filed July 27, 1976

Decision and Order of Judge Metzner, filed July 27, 1976

July 26, 1976.

This motion is granted. I have read the report of Magistrate Schreiber and the papers submitted in opposition and I agree with suggested disposition of the magistrate.

So ordered.

s/ Charles M. Metzner
U.S.D.J.

First Amended Complaint (without exhibit)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

-against-

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL H. ESCHEN, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS, JAMES F. MORRILL,

Defendants.

- X

78 Civ. 1467 CMM

FIRST AMENDED COMPLAINT

Plaintiff demands trial by jury

Plaintiff by his attorneys, Berman and Zivyak, on his own behalf and on behalf of all similarly situated shareholders of Continental Steel Corporation ("Continental") complaining of the defendants, respectfully allege:

JURISDICTION AND VENUE

1. This action arises under Sections 11, 12, 14 and 17 of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and the rules and regulations of the Securities Exchange Commission promulgated thereunder.

2. The jurisdiction of this Court and the venue of this action are founded upon Section 22 of the Securities Act and Section 27 of the Securities Exchange Act and the principles of pendent jurisdiction.

3. The acts and transactions hereinafter complained of were affected through the use of means and instrumentalities of interstate commerce and a substantial number of said acts or transactions occurred within the Southern District of New York.

CLASS ACTION ALLEGATIONS

4. Plaintiffs bring this action as a class suit pursuant to Rule 23(b)(1)(A), (B) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all present shareholders of Continental Steel Corporation similarly situated.

5. There are many hundreds of persons who are members of the class, located in various parts of the country.

6. Plaintiff and his counsel, who are experienced in matters under the Federal Securities Laws, will fairly and adequately protect the interests of the class. Plaintiff's interest is to obtain substantial relief for himself and the class for the violations of law set forth herein.

7. The similarity of plaintiff's claims to those of the class will assure that plaintiff will fairly and adequately represent the interest of said class. Plaintiff and his counsel are prepared to, and intend to, prosecute this action vigorously.

8. Virtually all questions of law and fact are common to the class, since the class claim herein arises by virtue of the unfairness of a single set of transactions, namely, the steps leading up to the merger of Continental Steel Corporation into Penn-Dixie Cement Corporation.

9. (a) The questions of law and fact that are common to the class predominate over questions affecting only individual members.

(b) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(c) The statutory misconduct perpetrated by the defendants were perpetrated on all members of the class namely purchasers and forced sellers of Continental Steel Corporation.

(d) A multiplicity of suits in various jurisdictions by stockholders all over the United States with consequent burdens on the Courts and the defendants should be avoided.

(e) It would be virtually impossible for all of said stockholders to intervene as parties plaintiff in this action.

(f) To the best of plaintiff's knowledge, information and belief, there is no pending litigation by members of the class concerning the controversy.

(g) When the liability of the defendants has been adjudicated, claims of all members of the class can be filled in, and determined by this Court.

(h) This class action will foster orderly and expeditious administration of the class claims; economies of time, effort and expense will be fostered; and uniformity of decision will be ensured. This act presents an appropriate

mechanism to prosecute the interests of all members of the class.

(i) This action presents no difficulties which would impede its management by the Court as a class action.

COUNT I

10. Plaintiff, John Schlick, at all times relevant hereto, was a purchaser of and a holder of 2,000 shares of Continental Steel Corporation ("Continental") Common Stock.

11. Continental was an Indiana corporation whose shares were publicly traded on the New York Stock Exchange.

12. Defendant, Penn-Dixie Cement Corporation ("Penn-Dixie") is a Delaware corporation whose shares are publicly traded on the New York Stock Exchange and at all times relevant hereto, owned a majority of Continental's issued and outstanding stock.

13. The defendants Jerome Castle, Daniel H. Eschen, Omar J. Glantz, James C. Jacobsen, Harvey Kushner, Alfonso J. Marcelle, Oliver K. Parry and Paul Windels, Jr. are officers and directors of the defendant Penn-Dixie.

14. The defendants, Jerome Castle, Omar J. Glantz, George C. Green, James C. Jacobsen, Eric M. Javitz, Harvey Kushner, Alfonso J. Marcelle, James F. Morril and Paul Windels, Jr. are officers and directors of Continental.

15. Upon information and belief, and as set forth in a proxy statement submitted to Continental stockholders dated March 29, 1973(a copy of which is annexed hereto as Exhibit "A"), the defendants have engaged in the following course of conduct.

(a) From time to time, from October, 1967, to October, 1969, Penn-Dixie purchased 1,111,514 shares of Continental Common Stock.

(b) Upon information and belief, in September, 1968, at the time when Penn-Dixie owned approximately 38% of the outstanding Continental Common Stock, the defendant caused the directors of Continental to increase the number of Continental directors by one and elected Jerome Castle, President of Penn-Dixie, a director.

(c) Upon information and belief, thereafter, defendant, Penn-Dixie increased its holdings of Common Stock of Continental to more than 50% and thus used its influence to cause officers and directors of Continental to be replaced by officers and directors of Penn-Dixie to the extent that on the date and dates of the transactions herein alleged, Penn-Dixie effectively controlled operations and management of Continental; thereafter and at all of the times hereinafter alleged, Penn-Dixie caused Continental to be managed in the best interests of Penn-Dixie and to the detriment of Continental, and as a result, the interests of the stockholders of Continental have been seriously prejudiced.

(d) On March 14, 1973, the Boards of Directors of Penn-Dixie and Continental, both approved an Agreement of Merger to merge Continental into Penn-Dixie upon terms substantially more beneficial to the shareholders of Penn-Dixie than the shareholders of Continental.

(e) Pursuant to the terms and conditions of the Agreement of Merger, each outstanding shares of Continental held by stockholders other than Penn-Dixie, was converted into Penn-Dixie common stock and warrants. The conversion was at the rate of one and one-half shares of Penn-Dixie Common Stock and one Warrant for each share of Continental Common Stock.

16. The acts of the defendants in the operation and management of Continental and Penn-Dixie, and in executing the Agreement of Merger, upon the terms and conditions contained therein, as hereinafter set forth, constitute the engagement in a course of conduct which operated as a fraud and deceit upon the purchasers and holders of Continental Stock and in connection with their forced sale thereof in that:

(a) Since the control of the management of Continental was taken over by Penn-Dixie, the following actions were taken, all at the expense of Continental and its minority stockholders and to the benefit of Penn-Dixie.

(i) Upon information and belief, balances in bank accounts of Continental commencing with the deposit of $300,000 in the Franklin National Bank on or about 1970 were utilized by Penn-Dixie, as compensating balances for its own borrowings, and to further its own financing and solely for Penn-Dixie's benefit with Penn-Dixie's lending banks - all without compensation or benefit to Continental; thus

depriving Continental of its ability to use its own capital to expand its business and earnings and thereby, obtain a more favorable exchange in the merger.

(ii) Upon information and belief on or about September 24, 1970, at a time when Continental was in need of funds to expand its own steel making capacities and continue its water pollution programs, Penn-Dixie, through its control of the Continental Board of Directors, caused the Continental Board to approve a Real Estate transaction (the development of the land for the sale of multiple dwellings) with a "special customer" of Penn-Dixie.

(a) In order to avoid a default in the Continental loan agreement, [upon information and belief, the loan agreement prohibited an investment in Real Estate as proposed,] Jerome Castle caused the Board to purchase an option for the purchase of 132.614 acres in Broward County, Florida, from Joseph Aronoff a "special customer" shareholder and affiliate of Castle and Penn-Dixie for $75,000.

(b) Upon information and belief, on or about May 19, 1971, Continental purchased the option from Joseph Aronoff for $75,000, then exercised the option and purchased the tract of land.

(c) That the aforesaid transaction was designed solely for the benefit of Penn-Dixie, as a way of repaying a favor to a "friend" of Penn-Dixie's, Joseph Aronoff, and in opposition to the best interests of Continental.

(d) Upon information and belief, Continental was not compensated for tieing up its funds and incurred a loss as a result thereof.

(iii) Upon information and belief, Penn-Dixie caused Continental to be charged with salaries and expenses of officers, employees, directors, and lawyers of Penn-Dixie, caused expenses of the operations of Penn-Dixie (including but not limited to the expenses incurred in the operation of an airplane for the use of Penn-Dixie, its officers and directors and friends) to be charged to Continental, and caused Continental to be bound by excessive long term executive salaries to at best, part time officers or directors, to wit: 10 year contract to Jerome Castle at $50,000 per annum plus expenses:

(a) Excessive non-productive inter-company costs reduced Continental's income during the periods in question -- increased the income of Penn-Dixie, thus adversely affecting the merger ratio.

(b) Upon information and belief, that upon gaining control of the Board of Directors, Penn-Dixie caused Continental on or about March, 1970, to make a loan to Penn-Dixie in the amount of $1,135,000.

(i) That at the time of the granting of the loan to Penn-Dixie, Continental needed the funds to increase the capacity of its rod mill and for other improvements to increase its production capabilities.

(ii) That Continental was not adequately compensated for granting the aforesaid loan.

(iii) That the loan was solely to enhance the operations of Penn-Dixie and of absolutely no benefit to Continental.

(iv) That upon information and belief, on November 30, 1970, a book keeping entry was made and Penn-Dixie was credited with re-payment of the aforesaid loan. Simultaneously therewith, a new loan was granted by Continental to Penn-Dixie in the increased amount of $1,500,000.

(v) All of the above transactions caused a dimunition in the earnings of Continental -- an increase in the earnings of Penn-Dixie and caused an adverse merger ratio to the shareholders of Continental.

(vi) Upon information and belief such other loans were made by Continental to Penn-Dixie because of Penn-Dixie's dominance of Continental's Board.

(c) Upon information and belief, Penn-Dixie domination of the Continental Board of Directors which led to a change in the administration of the Continental Pension Fund resulted in an ultimate loss to Continental of approximately $2,000,000 in 1971 and at least $500,000 in 1972.

(i) Upon information and belief, prior to the control of the Board of Directors of Continental by Penn-Dixie, the Continental Pension Fund was managed and administered as a common fund by the Continental Illinois National Bank and Trust Company.

(ii) On March 19, 1970, Jerome Castle ordered a feasibility study to amend the Company's two pension trusts for common funds to separate funds.

(iii) On April 29, 1970, the Treasurer, George V. Reed reported that a change to a separate fund would cost a 10% higher fee for management and administration. He further advised the Penn-Dixie controlled Board of Directors that the Trustee (Continental Illinois National Bank and Trust Company) suggested that the funds remain as common funds.

(iv) On May 5, 1970, the funds were removed from the Continental Illinois National Bank and Trust Company's co-mingled account and established as separate funds under the Bank's Trusteeship. At the same time in amending the fund an investment committee was established with power to direct the trustee to make investments.

(v) On January 28, 1971, the Penn-Dixie controlled investment committee voted to have the pension fund invest $1,250,000 of its funds in a loan to Penn-Dixie.

(vi) Upon information and belief, the Trustee advised against the granting of the loan.

(vii) Upon information and belief, the loan was approved by the Continental Board unanimously because the independent members of the Board were advised that the Penn-Dixie majority would vote to dismiss Continental

Illinois as Trustee in which case the investment committee -- composed of all Penn-Dixie appointee's would have complete unfettered control of the funds.

(viii) On February 23, 1971, the Continental Board of Directors voted to remove the Continental Illinois National Bank and Trust Company as Trustee to be replaced by a committee of three Penn-Dixie nominees, Jerome Castle, Robert W. Lefferts and Meyer L. Kamin to self administer the funds.

(ix) On May 4, 1971, the Board of Directors approved the removal of the Continental Illinois National Bank and Trust Company as trustee of the pension-funds.

(x) On or about July, 1971, the United Steel Workers of America commenced a litigation in Chicago, Illinois, alleging that the pension funds were being misused, and mismanaged by Continental Steel. The Court ordered the funds turned over to the Amalgamated Trust Company for safe keeping pending determination of the litigation.

(xi) Upon information and belief, in or about July 1971 the United Steel Workers of America went on strike against Continental, the major issue of the strike being the control over the pension funds. The strike lasted 41 days during which time Continental was unable to operate, and was settled on October 11,

1971, by the signing of an agreement for the control of the pension funds by an independent trustee. Local issues were settled by local unions U.S.W. 1054 and 3601 on October 12, 1971.

(xii) The costs of the strike to Continental was $1,086,000. In addition, Continental incurred substantial legal fees, and was forced to acceed to local union demands with regard to wages and [illegible] matters.

(xiii) The change in Trusteeship of the funds, all as set forth above, cost Continental approximately $500,000 additional costs and charged as expenses against its income in 1971.

(xiv) That as a result of the above actions by Penn-Dixie, Continental's earnings in 1971 were substantially diminished, thus unfavorably affecting the merger ratio in favor of Penn-Dixie.

(d) That the following exerpts from the consolidated statement of income of Continental were set forth in the Joint Proxy Statement [Exhibit A, page 13].

	December 31 1968	1969	Jan. 2 1971	Dec. 30 1972	Jan. 1 1972
Sales and other revenue	$62,238,065	$60,670,490	$67,251,644	$92,949,107	$81,868,441
Net Income	1,370,241	2,032,480	1,861,006	3,007,602	1,954,297
Net Income per share	$.65	$.96	$.87	$1.43	$.93
Cash Dividends	$.80	$.50	$.48	$.40	$.40

(i) That upon taking over control of the Board of Directors of Continental, Penn-Dixie commenced a course of action to depress the price of the common stock of Continental being traded on the New York Stock Exchange in order to effectuate a more favorable ratio to the shareholders of Penn-Dixie and decrease the "excess of cost over assets acquired" of $21,425,000 on its own balance sheet.

(ii) That although Continental's earnings increased from 1968 to 1972 from $1,370,241 ($.65 per share) to $3,007,602 ($1.43 per share) (despite the efforts of Penn-Dixie to manipulate the earnings of Continental) the dividends during the same period decreased from 80 cents per share to 40 cents per share, a 100% reduction, despite better than a 100% increase in earnings.

(iii) On July 27, 1971, the President of Continental reported that earnings for the year were almost double that of the prior year $.86 to $.46 for the six month period. The Board of Directors approved the repurchase of 12,910 of the Company's shares at the market price, thus increasing Penn-Dixie's percentage ownership in Continental. The dividend was declared at 10 cents per share (20 cents after adjustment).

(iv) The decrease in the dividend was designed and did have the effect of severely decreasing the price that the shares of Continental were traded at on the New York Stock Exchange, thus severely prejudicing

the exchange ratio to the detriment of the Continental shareholders.

17. There was no valid economic or business reason for the merger with regard to Continental. The merger was clearly against the interests of the Continental shareholders. The plaintiffs as forced sellers had no right of appraisal under Indiana law and could not effectuate a sale of their shares in the market under favorable terms as a result of the defendants actions in depressing the price of the shares which were traded on the New York Stock Exchange.

18. The defendants attempts over a prolonged period of time to merge Continental into Penn-Dixie had a depressing effect upon the market price of the shares of Common Stock of Continental being traded on the New York Stock Exchange.

19. Upon information and belief, the defendants, through their domination of the Continental Board of Directors, caused Continental or its subsidiaries, to sell steel products and/or make other arrangements with Penn-Dixie or its subsidiaries, under terms and conditions more favorable to Penn-Dixie, then it would sell or distribute its products to a non-affiliated customer.

20. The interlocking Boards of Directors were more favorable to Penn-Dixie than Continental, when comparing the comparative values in setting the merger ratio.

(a) All of the actions of Penn-Dixie as set forth above reduced the price Continental's shares were selling for on the New York Stock Exchange.

(b) The reduction of the dividend, the hiring and firing of officers and directors, the borrowing by Penn-Dixie, the domination by Penn-Dixie, the loan restrictions placed upon Continental by Penn-Dixie's lenders involved restrictions on the activities and plans of Continental, the strike, the attempt and preliminary market knowledge as early as 1970 that there was going to be a merger, the requirement by Penn-Dixie lenders that Penn-Dixie was required to merge with Continental or its credit line would be cancelled, among other things, these actions all tended to reduce the value of Continental's shares as traded on the New York Stock Exchange.

(c) In valuing the shares of Continental held by Penn-Dixie, the Penn-Dixie Board consistently, even at the date of approval of the merger and the setting of the merger ratio, advised its auditors that the value of its investment in the shares of Continental ("excess of the carrying value of investment in consolidated subsidiaries over the underlying net assets acquired") should not be amortized since in the opinion of Penn-Dixie "there has been no dimunition of its value".

(d) Upon information and belief, the value placed upon the shares of Continental by Penn-Dixie which shares "in which there has been no dimunution in value" was $40 per share.

(e) The Penn-Dixie Controlled Continental Board of Directors, almost all of whom were Penn-Dixie directors as well, despite the facts set forth above, nevertheless, decided that in their opinion $15 was a fair value to be placed upon the Continental shares.

(f) The Continental Board further failed in their dual capacities to protect the Continental shareholders by agreeing to accept one and one half shares of Penn-Dixie common stock, and warrants to purchase Penn-Dixie stock at $8-$11 as equivalent to the aforesaid value of one share of Continental.

(g) The Continental Board of Directors accepted the aforesaid ratio, knowing the depressed value of the Continental shares, the reasons for the aforesaid depressed price and the over inflated value of the Penn-Dixie shares, as hereinafter set forth.

21. The defendants engaged in a course of conduct designed to increase the values of Penn-Dixie, by inflating its balance sheet and earnings thus attempting to create a higher price for the value of its shares as traded on the New York Stock Exchange and thus create a more favorable exchange ratio to Penn-Dixie. Among other things, the Penn-Dixie financial statements were manipulated as follows:

(a) No provision was made for the amortization of the $21,425,000 excess of cost over assets acquired attributable to the purchase of the Common Stock of Continental.

(i) As a result of the above, there was no charge made against Penn-Dixie consolidated statement of income during the years 1970-1972.

(ii) Had there been a charge against income (as there should have been) Penn-Dixie's income would have decreased by at least $750,000 for each of the years 1970-1972 or approximately $.16 per share (prior to taxes).

(iii) Penn-Dixie's book value per share would have been decreased similarly for each year of amortization.

(b) No proper charges were made for compensating balances in Penn-Dixie banks. No proper deduction was made for interest that should have been paid to Continental.

(c) No proper charges were made for officers, directors and employees of Penn-Dixie who were placed upon Continental's payroll, and paid by Continental.

(d) Inter-Company costs, legal, accounting, public relations, travelling, entertainment, airplane and other incidental costs were charged to Continental when they were actually incurred, and were for the benefit of Penn-Dixie.

(e) No proper deductions were made on Penn-Dixie financial statements for the investment made by Continental in a Florida land speculation, to accomodate a "special customer, and/or friend of Penn-Dixie, or for the $75,000 alleged purchase of an option, all as more fully set forth in paragraph 16 above.

(f) The Penn-Dixie financial statements were so devised that it was made to appear that Penn-Dixie's earnings were increasing from the years 1970-1972 when in reality the entire increase was due to the fact that because Penn-Dixie owned 51% of the shares of Continental all of the Continental revenues were set forth on the Penn-Dixie statement of income, then 50% of the earnings of Continental were deducted from the Penn-Dixie income statement. [minority interest]

(i) The income attributable to the ownership of Continental amounted to approximately $1,007,000 in 1970, $1,226,153 in 1971 and $1,753,534 in 1972. The Continental income accounted for approximately $.50 of the alleged $.80 earned by Penn-Dixie in 1972.

(g) In 1972, at a time when it was short of operating capital, using its control of Continental to allow it to borrow $1,500,000 and its domination over the pension fund committee to borrow $1,500,000 from the Continental Pension Fund (all as set forth above) the Board of Directors of Penn-Dixie caused the repurchase of an aggregate of approximately $1,500,000 of Penn-Dixie's 5% convertible subordinated debentures.

(i) The repurchase was made solely to dress up the Penn-Dixie statement of income.

(ii) The statement sets forth under Miscellaneous Income--above the line a "profit"of $685,000 on the repurchase of the debentures.

(iii) This non-recurring item was disclosed in a footnote, however, the consolidated statement of income depicts this income as "other income -- Miscellaneous", giving the appearance that it is income from continuing operations--rather than non-recurring income.

(h) No disclosure was set forth in the consolidated income statement, or anywhere else in the"Joint Proxy Statement" that net income of Penn-Dixie in 1972 without giving effect to the earning attributable to Continental and the "non-recurring income"

from the repurchase of its debentures amounted to only $500,000 on merely $.17 per share, as compared with the $.80 per share as depicted.

(i) The $.17 per share income would be further reduced by $.08 per share were the "excess cost over the underlying net assets" been properly amortized, all as set forth above.

(i) Upon information and belief "Miscellaneous Income" includes other non-recurring income -- not properly accounted for by its inclusion "above the line".

22. The defendants failed to disclose all of the facts set forth in paragraph 21 above, to the plaintiff and other minority stockholders of Continental similarly situated.

23. But for the conduct of the defendants which caused a decrease in the earnings in Continental and the market price of Continental, and the alleged increase in the earnings and market price of Penn-Dixie, the exchange ratio arrived at would have been more beneficial to the minority stockholders of Continental than that which was ultimately determined.

COUNT II

Violation of Section 14(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78n(a) and Rule 14a-9 thereunder (17 C.F.R. 240.14 a-a) Proxy Solicitation through the use of false and misleading statements.

24. Plaintiff repeats and reiterates each and every allegation of paragraphs 1 through 23.

25. The defendants violated Section 14(a) of the Securities Exchange Act of 1934, and Rule 14a-9 thereunder in the solicitation of proxies in connection with the adoption of the Agreement of Merger which contained statements of material facts which were false and misleading and omitted to state material facts necessary to make the statements not false and misleading.

26. Said proxy statement was false and misleading as follows:

(a) The Board of Directors of Continental approving the Agreement of Merger was wholly and completely under the influence and control of Penn-Dixie. Six out of the nine members of the Board of Directors of Continental are also members of the Board of Directors of PennDixie.

(b) No facts were set forth in connection with the use by Penn-Dixie of compensating balances composed of Continental funds.

(c) No disclosure was set forth concerning the financing and/or other financial transaction which Penn-Dixie caused Continental to enter into in Florida which upon information and belief was made solely to benefit an important customer of Penn-Dixie which caused Continental a loss of earning power on its funds and a loss of income.

(d) Inter-Company costs were heavily weighted against Continental.

(e) The financial information contained in the Proxy Statement was designed to bolster the earnings presentation of Penn-Dixie in order to create the impression that

the exchange rate was fair and failed to adequately disclose that:

(i) The substantial increase in gross sales of Penn-Dixie was substantially attributable to the inclusion into its income of the gross sales of Continental;

(ii) Gross incomeprior to taxes without the inclusion of the sales and revenues of Continental would have been approximately $1,365,329 not $7,264,684, as reported in the Consolidated Statement of Income;

(iii) The Consolidated Statement of Income included a $685,000 non-recurring gain on the repurchase of the Penn-Dixie's 5% Convertible Subordinated Debentures as "Miscellaneous Income" whereas, it should appear below the line as "Non-Recurring Income;"

(iv) Net income of Penn-Dixie without giving effect to both "non-recurring income" and the earnings attributable to the ownership of Continental would reflect a profit before taxes of approximately $1,000,000 or approximately $500,000 after taxes or approximately $.17 per share;

(v) the earning statement is so designed to create the appearance that Penn-Dixie is prospering at a substantial increasing rate when in reality, its strength and growth can be directly attributable to its ownership and control of Continental and the income and earnings derived therefrom;

(vi) subtracting the gross income from the gross sales and revenues of Continental from the gross sales and revenues of Penn-Dixie, reveals gross income of Penn-Dixie as follows:

1969	1970	1971	1972
$140,000,000	$139,000,000	$142,000,000	$147,000,000

This reflects a far lower % increase in overall revenues than is depicted in the Consolidated Statement of Income on page 4 of the Proxy Statement which includes the revenues of Continental and provides as follows:

1969	1970	1971	1972
$200,000,000	$206,000,000	$223,000,000	$239,000,000

(vii) The financial information submitted to stockholders in the aforesaid Proxy Statement fails to adequately call to the attention of the Continental stockholders that Continental on gross sales of $92,949,107, returns to gross income before taxes of $5,899,355 or 6.5% of gross sales, whereas Penn-Dixie excluding Continental's revenues and non-recurring income, returns approximately $1,000,000 to net before taxes on sales of approximately $147,000,000 or less than 1% of gross sales:

(viii) Earnings per share as set forth on page V of the Brief Summary of Proposed Actions sets forth earnings of Penn-Dixie at $.80 per share for the year ended December 31, 1972 without reflecting the amount directly attributable to the ownership of Continental or approximately $.48 per share.

(f) Disclosure was not made as to the actual contents of the book value of Penn-Dixie, more particularly any specific reference to the excess of cost over assets acquired in connection with the acquisition of the Continental stock.

(g) No disclosure was made that the defendants caused the Pension Fund of Continental to loan funds to Penn-Dixie.

(h) No information was submitted relative to a potential decrease in dividends to shareholders of Continental after the exchange.

(i) The "Reasons for the Merger" set forth on page iii of the Joint Proxy Statement (Exhibit A) do not set forth the fact that the primary reason for the merger was that Penn-Dixie lenders required the merger to be consummated by June 30, 1973, or its line of credit will be called.

(i) It does not set forth the fact that there was no valid economic reason or justification for Continental to be merged into Penn-Dixie.

(j) There was no adequate disclosure anywhere in the Joint Proxy Statement (Exhibit A) of the various prices that Penn-Dixie paid for its shares of Continental.

(k) There was no adequate disclosure that Penn-Dixie valued its shares at their original purchase price (upon information and belief approximately $38 per share) and were not reducing their value on the Penn-Dixie balance sheet because the Penn-Dixie Board of Directors believed that the shares were still worth the price paid by Penn-Dixie.

(l) There was no adequate disclosure that upon the consummation of the merger Penn-Dixie would achieve a profit of approximately $7,000,000 as a result of the merger because the value of the exchange was less than the carrying value of

the excess of cost being carried on the Penn-Dixie balance sheet. The financial transaction would be the equivalent of Penn-Dixie repurchasing bonds at a discount.

This information would have informed the Continental shareholders that the exchange of Penn-Dixie shares was too low, or the carrying value of the Continental shares by Penn-Dixie was too high (the value of the shares were not being amortized).

(m) The historical income and book values as set forth on page V . of Exhibit A do not properly disclose all of the manipulations and manipulative accounting procedures and other pertinent data as set forth in all of the previous paragraphs herein, and more particularly, the information contained in paragraph 24. The earnings of Penn-Dixie are over-inflated and proper disclosure was not set forth as to the items comprising the earnings -- or lack of same.

COUNT III

27. Plaintiff repeats and reiterates each and every allegation of paragraphs 1 through 26.

28. The defendants, by reason of the ownership of in excess of 50% of the Common Stock of Continental by Penn-Dixie, owed a duty to the plaintiff and all persons similarly situate to manage Continental for the best interests of all of its shareholders.

29. In breach of said duty, defendants have failed to manage and direct the affairs of Continental in a manner which would promote the general corporate welfare of Continental,

but have managed it in a manner which would benefit the defendants in that the merger between Penn-Dixie and Continental could be effected on terms favorable to Penn-Dixie shareholders at the expense of the shareholders of Continental.

30. By reason thereof, plaintiff and all other persons similarly situated have been damaged in an amount as yet unascertainable, but in no event less than $10 per each share held.

COUNT IV

31. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 30.

32. Jurisdiction of this Count is based upon pendent jurisdiction.

33. The acts and transactions set forth in this count constitute breaches of fiduciary duties owned by the defendants, to plaintiff and each member of the class. Defendants knowingly participated in these breaches.

34. By reason of the aforesaid breaches of fiduciary duties by defendants, plaintiffs and each member of the Class have sustained and will continue to sustain substantial damages in an amount which is presently undetermined.

35. By reason of the foregoing, plaintiff and the members of the class were damaged in an amount not yet determined inter alia by:

(a) fraudulently entering into an Agreement of Merger under terms and conditions unfair to Continental shareholders;

(b) being fraudulently deprived of the fair and true value of their investment in Continental.

WHEREFORE, plaintiff demands judgment against the defendants as follows:

(a) Damages suffered by them and by all members of the class in an amount to be determined by the Court, but in no event less than $10.00 per share for each share purchased and held by the plaintiff and all those similarly situated.

(b) Declaring this action to be a class action within the meaning of Rule 23 of the Federal Rules and Civil Procedure.

(c) For interest, costs and disbursements of this action.

(d) For reasonable attorneys' fees.

(e) For such other and further relief as is just and proper.

BERMAN AND ZIVYAK

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Dated: New York, N. Y.
August , 1975.

Answer of Defendant Penn-Dixie Industries, Inc. to the First Amended Complaint, and Counterclaim

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated, Plaintiff, - against - PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL M. ESCHEN, OMAR J. GLANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS and JAMES F. MORRILL, Defendants.	73 Civ. 1467 C.M.M. ANSWER OF DEFENDANT PENN-DIXIE INDUSTRIES, INC. TO THE FIRST AMENDED COMPLAINT AND COUNTERCLAIM AGAINST PLAINTIFF JOHN SCHLICK

Defendant, Penn-Dixie Industries, Inc., the successor corporation to Penn-Dixie Cement Corporation (both of which are referred to as "Penn-Dixie"), by its attorneys, Fried, Frank, Harris, Shriver & Jacobson, as and for its answer to the First Amended Complaint, alleges as follows:

1. Denies each and every allegation contained in Paragraphs 1, 2 and 3 of the First Amended Complaint, except admits that plaintiff purports to predicate jurisdiction and venue of this action on the Securities Act of 1933, the Securities Exchange Act of 1934, rules promulgated under said acts, and the principles of pendent jurisdiction.

2. Denies each and every allegation contained in Paragraphs 4, 5, 6, 7, 8 and 9 of the First Amended Complaint.

3. Denies each and every allegation contained in Paragraphs 10 and 11 of the First Amended Complaint, except admits that prior to May 1973, Continental Steel Corporation ("Continental") was a corporation organized under the laws of the State of Indiana whose common stock was listed for trading on the New York Stock Exchange.

4. Denies each and every allegation contained in Paragraph 12 of the First Amended Complaint, except admits that Penn-Dixie is a corporation organized under the laws of the State of Delaware whose common stock is listed for trading on the New York Stock Exchange.

5. Denies each and every allegation of Paragraphs 13 and 14 of the First Amended Complaint, except admits that the individuals named therein have been, during differing periods of time, directors of Continental and/or Penn-Dixie, and respectfully refers the Court to the Continental Proxy Material, a copy of which is annexed to the First Amended Complaint as Exhibit A thereto (the "Continental Proxy Material") for the respective tenures of such individuals.

6. Denies each and every allegation contained in Paragraph 15 of the First Amended Complaint, except

admits that between October 1967 and October 1969, Penn-Dixie purchased shares of Continental Common Stock; admits that on March 16, 1973, Penn-Dixie owned 1,111,514 shares of Continental Common Stock, representing more than 50 percent of the outstanding shares of Continental Common Stock; admits that in September 1968, Jerome Castle was elected a director of Continental; admits that on March 14, 1973, the Board of Directors of Penn-Dixie and Continental approved the Agreement of Merger as contained in the Continental Proxy Material and respectfully refers the Court thereto for the terms thereof; admits that the Agreement of Merger was submitted to the stockholders of Continental in said Continental Proxy Material and approved by them; and avers that on May 11, 1973 the Agreement of Merger was reapproved by the Board of Directors of Continental.

7. Denies each and every allegation contained in Paragraphs 16, 17, 18, 19, 20, 21, 22 and 23 of the First Amended Complaint.

8. In response to Paragraph 24 of the First Amended Complaint, Penn-Dixie repeats and realleges its responses to Paragraphs 1 through 23 of the First Amended Complaint.

9. Denies each and every allegation contained in Paragraphs 25 and 26 of the First Amended Complaint.

10. In response to Paragraph 27 of the First Amended Complaint, Penn-Dixie repeats and realleges its responses to Paragraphs 1 through 26 of the First Amended Complaint.

11. Denies each and every allegation contained in Paragraph 28 of the First Amended Complaint, except avers that defendants have fully complied with and satisfied any and all duties which they had to Continental shareholders.

12. Denies each and every allegation contained in Paragraphs 29 and 30 of the First Amended Complaint.

13. In response to Paragraph 31 of the First Amended Complaint, Penn-Dixie repeats and realleges its responses to Paragraphs 1 through 30 of the First Amended Complaint.

14. Denies each and every allegation contained in Paragraphs 32, 33, 34 and 35 of the First Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

15. In 1972, Continental selected and retained independent investment counsel, the investment banking firm of Hayden Stone Inc., to investigate Penn-Dixie's initial merger proposal and to advise the Continental board on the fairness of the proposal to the stockholders of Continental.

16. The officers of Continental and Penn-Dixie,

together with independent auditors and special legal counsel, undertook the preparation of proxy material setting forth factual details of all material aspects of the transaction as specified by the proxy rules of the Securities and Exchange Commission. This proxy material was filed with the Securities and Exchange Commission jointly by Penn-Dixie and Continental and was subsequently cleared.

17. Based upon its own investigation, its expertise in analyzing transactions of this sort and its review of the Continental Proxy Material, Hayden Stone Inc. advised the Board of Continental that the proposal was "fair and reasonable" to the stockholders of Continental.

18. On March 14, 1973, the Board of Directors of Continental, upon careful consideration of all aspects of the transaction, including the final drafts of the material set forth in the Continental Proxy Statement, and the report of Hayden Stone Inc., and with due regard to the expert opinion of Hayden Stone Inc., recommended the terms of the merger to the stockholders of Continental for approval.

19. The Continental Board further called a special meeting of the stockholders of Continental for April 11, 1973, for the purpose of considering and acting

upon the proposed merger, and it directed that the Continental Proxy Material be mailed to the stockholders for use at the meeting. Accompanying the Proxy Material was a form of proxy giving stockholders who did not attend the meeting the right to vote either "FOR" or "AGAINST" the proposed merger.

20. On April 11, 1973, the special meeting of stockholders of Continental was held to consider the proposed merger. A quorum was present or represented and acted throughout the meeting, and the proposal to merge was duly approved by the stockholders, including a majority vote of participating stockholders not affiliated in any way with Penn-Dixie.

21. Meanwhile, on April 5, 1973, the first complaint in the instant action (the "Complaint") was filed. The Board of Directors of Continental immediately called upon the executive officers of Continental and Penn-Dixie, Hayden Stone Inc., and legal counsel to investigate the allegations of the Complaint; and thereafter the Continental Board met on May 11, 1973, to take final action regarding the plan of merger.

22. At such meeting of the Board of Directors of Continental on May 11, 1973, the executive officers of Continental and Penn-Dixie reported that there was no substance to the allegations in the Complaint; Hayden Stone

Inc. reported that it had investigated such allegations, and it reaffirmed its opinion that the plan of merger was "fair and reasonable" to the stockholders of Continental; and special legal counsel reported that it had investigated the allegations in the Complaint and that the Continental Proxy Material did not require any change in the light of such allegations and that it fully and completely described the proposed merger and all aspects thereof which were pertinent to a consideration of the transaction by them. Whereupon, the Board of Directors of Continental ratified the action of the Continental stockholders approving the plan of merger, and Continental was accordingly merged.

23. In all respects regarding the subject merger, and regarding Continental, its operations and minority stockholders, defendant Penn-Dixie, and its officers, directors and agents, acted in good faith and with diligence, care and skill and the exercise of good and reasonable business judgment.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

24. Repeats and realleges each and every allegation contained in Paragraphs 15 through 23 hereof.

25. Although, as an alleged stockholder of Continental, plaintiff had notice of and a complete description of the proposed transaction and the procedures of the Board of Directors of Continental in respect

thereof, no demand was made by plaintiff on the Board of Directors of Continental (or of Penn-Dixie) to take any action in respect thereto, and no objection was voiced prior to the merger, except as may be inferred from the plaintiff's Complaint. At all times, the Boards of Directors of Continental and of Penn-Dixie were prepared to consider and investigate thoroughly and impartially any objection, allegation, suspicion or demand voiced by any stockholder of Continental, as is demonstrated by the careful and searching inquiry made into the allegations in the Complaint.

26. Again, although the Complaint was filed five weeks prior to the consummation of the merger and the Complaint and the contents thereof were necessarily considered and planned substantially before the date of such filing, plaintiff chose not to seek injunctive relief against the merger, and, indeed, elected not to take any steps to induce either Continental or defendant Penn-Dixie to change its course through participation at the stockholders' meeting, or otherwise.

27. By reason of the foregoing, plaintiff's maintenance of this action is barred by waiver and estoppel, and for want of any causal relationship between the conduct alleged and any damage to plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

28. This action is barred by laches and by the statute of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

29. The First Amended Complaint is predicated on a purported "course of conduct" on the part of Penn-Dixie and the other named defendants, which allegedly occurred from and after October 1967. (Paragraph 15, page 4.)

30. The First Amended Complaint alleges that Penn-Dixie:

> ". . .increased its holdings of Common Stock of Continental to more than 50% and thus used its influence to cause officers and directors of Continental to be replaced by officers and directors of Penn-Dixie to the extent that on the date and dates of the transactions herein alleged, Penn-Dixie effectively controlled operations and management of Continental; thereafter and at all of the times hereinafter alleged, Penn-Dixie caused Continental to be managed in the best interests of Penn-Dixie and to the detriment of Continental, and as a result, the interests of the stockholders of Continental have been seriously prejudiced." (Id.)

31. Plaintiff was Executive Vice President of Penn-Dixie and also a Director of Penn-Dixie in 1968 and 1969. As such, plaintiff had responsibilities particularly with respect to Penn-Dixie's financial planning and financial affairs.

32. As an Officer and Director of Penn-Dixie,

plaintiff personally planned for, participated in and approved Penn-Dixie's acquisition of shares of Continental Common Stock.

33. During the course of plaintiff's tenure as an Officer and Director of Penn-Dixie, plaintiff was elected a Director of Continental. Plaintiff served both as a member of Continental's Board of Directors, and as a member of the Finance Committee of the Continental Board, while continuing to serve as an Officer and Director of Penn-Dixie. Plaintiff thus had full knowledge of the relationship between Continental and Penn-Dixie, and Penn-Dixie's conduct with respect to Continental.

34. Between 1967 and the commencement of this action in April 1973, despite the foregoing, at no time did plaintiff ever object to or complain of the alleged "course of conduct" of defendants or any of the matters alleged in the First Amended Complaint.

35. By reason of the foregoing, this action is barred by virtue of estoppel, waiver and ratification.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

36. The claims asserted do not arise under the Federal Securities Laws but rather seek redress for alleged violations, if any, of fiduciary duties imposed by state law. Accordingly, this action is not maintainable in a Federal Court.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, AND A COUNTERCLAIM AGAINST PLAINTIFF

37. Repeats and realleges each and every allegation contained in Paragraphs 29 through 35 hereof.

38. The First Amended Complaint further alleges that during a period which includes 1968 and 1969, Penn-Dixie engaged in a "course of action to depress the price of the common stock of Continental being traded on the New York Stock Exchange in order to effectuate a more favorable ratio to the shareholders of Penn-Dixie" on the ultimate merger of Penn-Dixie and Continental (First Amended Complaint, par. 16, p. 11). It is alleged, in particular, that Penn-Dixie reduced the dividend to be paid on Continental stock in order to depress the price of Continental stock.

39. According to plaintiff's sworn testimony given in this action, plaintiff deliberately participated in the aforesaid "course of conduct" by which it is alleged that Penn-Dixie acquired majority control of Continental, caused Penn-Dixie designees (including plaintiff) to become Continental directors, caused the dividend on Continental stock to be reduced, and caused Continental to be mismanaged. Plaintiff has testified that while he was an officer and director of Penn-Dixie and a director of Continental, he acted and voted contrary to his opinion

and beliefs as to what was in the best interests of Continental's public stockholders.

40. As hereinabove set forth, Penn-Dixie denies any and all liability, wrongdoing and violations of law alleged in the First Amended Complaint, and avers that it has at all times acted in good faith and with due care, and has no knowledge or reasonable ground to believe that any of its present or former officers, directors, employees or agents were engaged in any of the alleged wrongful or illegal conduct claimed in the First Amended Complaint.

41. In the event that any wrongful conduct is adjudged to have been committed regarding the matters asserted in the First Amended Complaint, any such violations occurred, at least in part, according to plaintiff's testimony, as a result of plaintiff's actions and conduct.

42. By reason of the foregoing, in the event that Penn-Dixie is adjudged to be liable to the purported class of Continental shareholders, plaintiff is liable to Penn-Dixie by way of indemnity, contribution and reimbursement in such amount as may be determined to be just and proper.

WHEREFORE, defendant Penn-Dixie Industries, Inc. prays for the following relief:

(a) That judgment be granted dismissing the first amended complaint with costs and disbursements;

(b) That judgment be granted awarding it reimbursement of its expenses, including the fees of its attorneys, on the ground that this action is frivolous and without foundation in law or fact, is known to be so by plaintiff and his attorneys, and was instituted and is being prosecuted in bad faith.

(c) In the event that Penn-Dixie is adjudged to be liable to the alleged class, that judgment be granted against plaintiff by way of indemnity, contribution and reimbursement in such amount as may be determined to be just and proper.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

By _____
A Member of the Firm

Attorneys for Defendant
Penn-Dixie Industries, Inc.
120 Broadway
New York, New York 10005
(212) 964-6500

Answer of Defendants Castle, et al. to the First Amended Complaint, and Counterclaim

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X---------- ----------X

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

- against -

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL M. ESCHEN, OMAR J. GIANTZ, JAMES C. JACOBSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS and JAMES F. MORRILL,

Defendants.

X----------X

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ANSWER OF DEFENDANTS CASTLE, GLANTZ, JACOBSEN, KUSHNER, MARCELLE AND MORRILL TO AMENDED COMPLAINT

Defendants Castle, Glantz, Jacobsen, Kushner, Marcelle and Morrill, by their attorneys, Aranow, Brodsky, Bohlinger, Benetar and Einhorn for their answer to the amended complaint herein.

FIRST DEFENSE

1. Deny each and every allegation contained in paragraph 1.

2. Deny each and every allegation contained in paragraph 2.

3. Deny each and every allegation contained in paragraph 3.

4. Deny each and every allegation contained in paragraph 4.

5. Deny each and every allegation contained in paragraph 5.

6. Deny each and every allegation contained in paragraph 6.

7. Deny each and every allegation contained in paragraph 7.

8. Deny each and every allegation contained in paragraph 8.

9. Deny each and every allegation contained in paragraph 9 and each subdivision thereof.

10. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

11. Admit the allegations contained in paragraph 11.

12. Deny each and every allegation contained in paragraph 12, except admit that Penn-Dixie is a Delaware corporation whose stock is traded on the New York Stock Exchange.

13. Deny each and every allegation contained in paragraph 13, except admit that certain of the individuals were or are officers or directors of Penn-Dixie.

14. Deny each and every allegation contained in paragraph 14, except admit that certain of the individuals were or are officers or directors of Continental.

15. Deny each and every allegation contained in paragraph 15 and each subdivision thereof, except admit that Penn-Dixie purchased certain stock of Continental at various times, that Castle was elected a director of Continental and that a merger was approved and refer to the documents for the terms and provisions thereof.

16. Deny each and every allegation contained in paragraph 16 and each subdivision thereof.

17. Deny each and every allegation contained in paragraph 17.

18. Deny each and every allegation contained in paragraph 18.

19. Deny each and every allegation contained in paragraph 19.

20. Deny each and every allegation contained in paragraph 20 and each subdivision thereof.

21. Deny each and every allegation contained in paragraph 21.

22. Deny each and every allegation contained in paragraph 22.

23. Deny each and every allegation contained in paragraph 23.

24. Repeat the matters hereinabove set forth as to paragraphs 1 through 23.

25. Deny each and every allegation contained in paragraph 25.

26. Deny each and every allegation contained in paragraph 26 and each subdivision thereof.

27. Repeat the matter hereinabove set forth as to paragraphs 1 through 26.

28. Allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 and allege that they have fully satisfied any fiduciary duties imposed upon them.

29. Deny each and every allegation contained in paragraph 29.

30. Deny each and every allegation contained in paragraph 30.

31. Repeat the matters hereinabove set forth as to paragraphs 1 through 30.

32. Deny each and every allegation contained in paragraph 32.

33. Deny each and every allegation contained in paragraph 33.

34. Deny each and every allegation contained in paragraph 34.

35. Deny each and every allegation contained in paragraph 35.

SECOND DEFENSE

36. This Court lacks jurisdiction over each of the claims asserted.

THIRD DEFENSE

37. Each of the claims asserted fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

38. The claims asserted are barred, in whole or in part, by the applicable statute of limitations and by laches.

FIFTH DEFENSE

39. The claims asserted do not arise under the Federal Securities Laws but rather seek redress for alleged violations, if any, of fiduciary duties imposed by state law. Accordingly, this action is not maintainable in a Federal court.

SIXTH DEFENSE

40. Defendants acted in good faith, without knowledge of any impropriety and in reliance upon the advice of experts.

SEVENTH DEFENSE

41. The claims asserted are barred by waiver, estoppel,

ratification, the bad faith of plaintiff and his participation in the acts complained of.

EIGHTH DEFENSE

42. Plaintiff and the alleged class members suffered no loss or damage as a result of any of the acts complained of in the amended complaint.

NINTH DEFENSE

43. Plaintiff does not fairly and adequately represent the interests of the alleged class.

TENTH DEFENSE

44. Defendants incorporate, as if herein fully set forth, the affirmative defenses contained in the answer of defendant Penn-Dixie.

FIRST COUNTERCLAIM

45. Plaintiff participated in certain of the acts complained of in the amended complaint. If any loss or damage were caused to the class by reason of the matters alleged, then plaintiff is responsible for such loss as a participant in the acts complained of.

46. Accordingly, if any recovery is rendered against defendants, plaintiff is liable over to them by way of contribution in such amount as may be determined to be just and proper.

WHEREFORE, defendants demand judgment:

a) Dismissing the complaint.

b) For contribution against plaintiff in the event defendants are found liable to the alleged class.

c) Granting defendants costs and disbursements, as well as reimbursement of the fees of their attorneys on the ground that this action is frivolous and without foundation in law or fact and is known to be so to plaintiff and his attorneys.

Dated: New York, N.Y.
August 16, 1975

ARANOW, BRODSKY, BOHLINGER
BENETAR & EINHORN

By _____

Attorneys for Defendants
Castle, Glantz, Jacobsen,
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Amended Reply to Counterclaims

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN SCHLICK, individually and on behalf of all purchasers of the common stock of CONTINENTAL STEEL CORPORATION similarly situated,

Plaintiff,

- against -

PENN-DIXIE CEMENT CORPORATION, JEROME CASTLE, DANIEL M. ESCHEN, OMAR J. GLANTZ, JAMES C. JACOVSEN, HARVEY KUSHNER, ALFONSO J. MARCELLE, OLIVER K. PARRY, PAUL WINDELS, JR., GEORGE C. GREEN, ERIC M. JAVITS and JAMES F. MORRILL,

Defendants.

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AMENDED REPLY TO COUNTERCLAIMS

Plaintiff, John Schlick, by his attorneys Berman and Zivyak, for his reply to the counterclaims alleges as follows:

1. Denies each and every allegation contained in §§ 45 and 46 of the Answer of the individual defendants.

2. Denies and every allegation contained in paragraphs 39 through 42 of the Answer of defendant Penn-Dixie Industries, Inc.

FIRST AFFIRMATIVE DEFENSE
TO BOTH COUNTERCLAIMS

3. The counterclaims should be dismissed in that they are sham and false and have been interposed for delay and in an attempt to encourage members of the Class in the within action to opt out.

WHEREFORE, plaintiff demands judgment as prayed for in the first amended complaint, dismissing the counterclaims and granting plaintiff such other and further relief as is just.

Dated: New York, New York
September 10, 1976.

BERMAN AND ZIVYAK

By _____
A Member of the Firm

Attorneys for Plaintiff
450 Park Avenue
New York, New York 10022
(212) 593-1570

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